APPENDIX A

SUPREME COURT OF APPEALS
OF WEST VIRGINIA

No. 17315

IN RE 1975 TAX ASSESSMENTS
AGAINST ONEIDA COAL CO., *et al.*

July 17, 1987

Dissenting Opinion Sept. 18, 1987

Syllabus by the Court

1. " e equal and uniform clause of Section 1 of Article X of the West Virginia Constitution requires a taxpayer whose property is assessed at true and actual value to show more than the fact that other property is valued at less than true and actual value. To obtain relief, he must prove that the undervaluation was intentional and systematic." Syl. pt. 1, *Kline v. McCloud*, —— W.Va. ——, 326 S.E.2d 715 (1984).

2. "The price paid for property in an arm's length transaction, while not conclusive, is relevant evidence of its true and actual value. Such evidence may not be rejected in favor of a Tax Commissioner's old appraisal." Syl. pt. 2, *Kline v. McCloud*, —— W.Va. ——, 326 S.E. 2d 715 (1984).

3. "The term 'value' as used in article 10, section 1 of the West Virginia Constitution, means the 'worth in

money' of a piece of property-its market value." Syl. pt. 3, *Killen v. Logan County Commission*, —— W.Va. ——, 295 S.E.2d 689 (1982).

4. "It is a general rule that valuations for taxation purposes fixed by an assessing officer are presumed to be correct. The burden of showing an assessment to be erroneous is, of course, upon the taxpayer, and proof of such fact must be clear." Syl. pt. 7, *In re Tax Assessments Against Pocahontas Land Co.*, —— W.Va. ——, 303 S.E.2d 691 (1983).

Jack Alsop, P.A., Webster Springs, for Webster Co. Cómm.

Ernest V. Morton, Jr., Webster Springs, for Allegheny-Pitt.

Dan O. Callaghan, Richwood, for Allegheny-Pitt Coal & East Ky. Energy.

W.T. Weber, Jr., Weston, for Shamrock Coal Co. and Oneida Coal.

PER CURIAM:

This is an appeal by the County Commission of Webster County from orders entered by the Circuit Court of Webster County reducing the assessed valuation of certain real estate for the purpose of *ad valorem* taxation. By agreement of the parties, several cases involving the same issue of tax assessments based on deed values for different appellees have been consolidated for purposes of this appeal.

The circuit court issued the rulings now before us in cases brought by several landowners challenging the valuation placed on their respective properties by the Assessor for Webster County (hereinafter assessor) and upheld by the County Commission of Webster County sit-

ting as the Board of Equalization and Review[1] (hereinafter board of review) for the tax years 1976 through 1986. The appellee taxpayers are the following coal corporations who own both fee and mineral estates in Webster County: Allegheny-Pittsburgh Coal Company (hereinafter Allegheny-Pittsburgh) for valuations during the years 1976 through 1983; Shamrock Coal Company, Inc. (hereinafter Shamrock) and Oneida Coal Company, Inc. (hereinafter Oneida) for valuations during 1981 through 1986; and East Kentucky Energy Corporation (hereinafter East Ky. Energy) for valuations during the years 1984 through 1986.

Allegheny-Pittsburgh owned 7,374 acres of property in fee, surface, minerals, or various combinations of these estates, which it purchased in September, 1974, for a total consideration of $24,624,500, as shown by the declaration of consideration of value in the various deeds. For the tax years 1976 through 1983 this property was assessed annually at $12,312,250, or 50% of the purchase price listed as consideration in the original deeds.[2]

On July 15, 1982, Allegheny-Pittsburgh sold its property in Webster County to appellee, East Ky. Energy, for $29,842,500, and the annual assessed valuation thereafter was $14,921,250, which represented 50% of the purchase price as contained in the 1982 deed.

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[1] *W.Va.Code*, 11-3-24 [1979] provides: "The county commission shall annually, not later than the first day of February, meet for the purpose of reviewing and equalizing the assessment made by the assessor."

[2] "*W.Va.Code*, 18-9A-11 (1972) read *in pari materia* with *W.Va. Code*, 11-3-1 (1972) gives the assessor discretion to set the assessed value of property between fifty and one hundred percent of the appraised value." *In re Assessment of U.S. Steel*, 165 W.Va. 373, 377, 268 S.E.2d 128, 131 (1980). In 1981, *W.Va.Code*, 18-9A-11(f) was amended to provide that beginning July 1, 1981, the assessed valuation would be not less than 60 percent of the appraised valuation. *See also* note 3, *infra*. There is no allegation in the present case that the assessor applied different *rates* of assessment to the appellees' property as occurred in *U.S. Steel, supra*.

Appellees Oneida and Shamrock are wholly owned subsidiaries of Elk River Resources, Inc. On May 12, 1981, Shamrock conveyed 7,783 acres of coal in Webster County to Oneida without consideration as a result of the companies' corporate affiliation. The assessment on this property for tax years 1981 through 1986 was derived from the purchase price paid when Shamrock acquired the property on December 21, 1977, from Preston W. Carroll and his wife, as well as other properties situate in Braxton and Nicholas Counties. The assessor appraised the proportionate Webster County share of this conveyance at $5,867,600 and the assessed value at $2,933,800 or 50% of the appraisal value.

The appellees appealed the valuations by the board of review to the circuit court on the grounds that the assessments violated the equal and uniform clause of article X, section 1 of the West Virginia Constitution, and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The appellees charged that the practice by the assessor and board of review of basing assessments on the consideration recited in deeds of conveyance intentionally discriminates against landowners who recently purchased property.

Article 10, section 1 of the West Virginia Constitution provides that "[s]ubject to the exceptions in this section contained, taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value to be ascertained as directed by law." *W.Va.Code*, 11-3-1 holds that:

> All property shall be assessed annually as of the first day of July at its true and actual value; that is to say, at the price for which such property would sell if voluntarily offered for sale by the owner thereof, upon such terms as such property, the value of which is sought to be ascertained, is usually sold, and not the price which might be realized if such property were sold at a forced sale. . . .

In syllabus point 3 of *Killen v. Logan County Commission*, —— W.Va. ——, 295 S.E.2d 689 (1982), we held that "[t]he term 'value,' as used in article 10, section 1 of the West Virginia Constitution, means the 'worth of money' of a piece of property-its market value." [3]

The appellees presented expert evidence that the true and actual value of their property is lower than the purchase price stated in the deeds of conveyance. The appellees are more concerned, however, with the undervaluation of comparable Webster County properties. The appellees therefore argue that the primary issue presented by this case is whether the assessments of their property and comparable properties are equal and uniform under the United States and West Virginia Constitutions. The appellees contend that the board of review should have adopted the valuation of coal appraisals recommended in 1975 by the State Tax Commissioner of $360 per acre for coal and $300 per acre for surface, or even lower figures presented by their experts.

For the coal property owned by Shamrock and then Oneida, proof was offered by witnesses that in 1984 the appraised value was $119 per acre for an aggregate value of $926,177. Appellee Oneida now asserts by cross assignment of error that the true and actual value is $119 per acre and not $360 per acre as recommended by the State Tax Commissioner and adopted by the circuit court below.

Appellees, Allegheny-Pittsburgh and East Ky. Energy, challenged the assessor's valuations by presenting evidence of the assessed value of comparable properties. Based on

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[3] Prior to *Killen*, assessors relied on *W.Va.Code*, 18-9A-11, to assess property at less than the true and actual value. After *Killen*, Section 1b of Article X to the West Virginia Constitution was adopted which set the assessed value of property at 60 percent of its true value. Under this section, the percentage of assessed value can be altered by two-thirds of the members elected to each Legislative House.

this comparison, East Ky. Energy contended before the board of review and circuit court that the appraisal value for all of its Webster County property should be $1,049,872.43 or $142.37 per acre, instead of the $29,842,-500 price paid to Allegheny-Pittsburgh in 1982. East Ky. Energy has not appealed the circuit court's final ruling regarding the value of its coal and surface property.

It was the policy of the assessor's office during the relevant time period to assess all recently transferred property on the basis of 50 percent of the declaration of consideration of value. There appears to be no dispute that this method was uniformly followed for all such property. With respect to property which had not been recently conveyed, the assessor testified that the assessed values were raised by ten per cent in the years 1976, 1982 and 1984. The appellees contend that the assessor failed to equally and uniformly apply the ten per cent increase to all relevant property.

The appellant county commission, which adopted the assessor's valuations of all appellees' property while sitting as the board of review, argued on appeal to the circuit court and in their petition now before this Court that the tax assessments reflect the "true and actual" value of appellees' property, and that the assessor's method of valuation was valid and was uniformly applied.

The trial court ruled that the assessor and board of review, while justified in making the initial assessments of appellees' property, based on the actual purchase price, subsequently violated the equal and uniform clause of article X, section 1 by failing either to raise the assessments of comparable property to appellee's level, or to lower appellee's assessments to the level of substantially similar coal property. The court chose to lower the appellee's assessment by ordering the substitution of the tax commissioner's appraisal value of $360 per acre for coal property and $300 per acre for surface property.

In *Kline v. McCloud*, —— W.Va. ——, 326 S.E.2d 715 (1984), the taxpayer, Westvaco Corporation, raised the same argument asserted by the appellees: use of recent deed values would violate the equal and uniform taxation clause of our State Constitution, *W.Va. Const.*, art. X, section 1. The petition in *Kline*, *supra*, was brought by citizens and taxpayers in Randolph County who had tried to have the appraisal of property owned by Westvaco Corporation raised to reflect the actual purchase price. In that case the Assessor of Randolph County testified that he routinely used the 1965 State Tax Department appraisal, regardless of sale price, in order to maintain equality of taxation.

In *Kline* we reversed the trial court holding that property cannot be appraised at a value higher than the State Tax Commissioner's appraisal and established the following rule in syllabus point 2: "The price paid for property in an arm's length transaction, while not conclusive, is relevant evidence of its true and actual value. Such evidence may not be rejected in favor of a Tax Commissioner's old appraisal."

The trial court in the case before us acknowledged that an assessment based on the purchase price paid by the appellees could be properly sustained under the rationale in syllabus point 2 of *Kline*, *supra*. Further, the appellees do not contend that the purchases of their respective properties were not "arm's length transactions." We, therefore, hold that the consideration paid by the appellees represents the "true and actual value" of their respective properties as set by the board of review.

We also held in syllabus point 1 of *Kline* that:

> The equal and uniform clause of Section 1 of Article X of the West Virginia Constitution requires a taxpayer whose property is assessed at true and actual value to show more than the fact that other property is valued at less than true and actual value.

> To obtain relief, he must prove that the undervaluation was intentional and systematic.

The remaining question presented by this case is whether the undervaluation of other property in Webster County was "intentional and systematic" as argued by the appellees. The court below held that the failure of the assessor and board of review to either raise other taxpayers' assessments or lower the appellees' property valuation constituted discriminatory treatment of the appellees which justified a substantial reduction of the appellees' appraisal.

"It is a general rule that valuations for taxation purposes fixed by an assessing officer are presumed to be correct. The burden of showing an assessment to be erroneous is, of course, upon the taxpayer, and proof of such fact must be clear." Syl. pt. 7, *In re Tax Assessments Against Pocahontas Land Co.*, —— W.Va. ——, 303 S.E.2d 691 (1983).

We find that the record does not support the trial court's ruling that the actions of the assessor and board of review constitute "intentional and systematic" discrimination. The assessments based upon the price paid for the property in arm's length transactions are an appropriate measure of the "true and actual value" of appellees' property.

The uniform use of recent deed values as the basis for appraising property subject to *ad valorem* taxation does not violate *W.Va. Const.*, art. X, § 1. Any dispute the appellees have with the assessments of other landowners in Webster County may be presented to the board of review. "[*A*]*ny* person who is aggrieved by *any* assessment shall have the right to appeal that assessment (if they have appeared and contested the valuation before the Board of Equalization and Review)." *Tug Valley Recovery Center, Inc. v. Mingo County Commission*, 164 W.Va. 94, 101, 261 S.E.2d 165, 170 (1979). (emphasis in original).

In *Tug Valley, supra,* we found support for this position in both *W.Va. Code,* 11-3-25, which holds, in part:

> Any person claiming to be aggrieved by any assessment in any land or personal property book of any county who shall have appeared and contested the valuation or whose assessment has been raised by the county court [county commission] above the assessment fixed by the assessor, or who contested the classification or taxability of his property may, at any time up to thirty days after the adjournment of the county court [county commission], apply for relief to the circuit court of the county in which such books are made out. . . .

and *W.Va.Code,* 18-9A-11 which holds in part:

> In the event the county commission shall fail or refuse to make the reallocation of levies as provided for herein, the county board of education, the tax commissioner, the state board, or any other interested party, shall have the right to enforce the same by writ of mandamus in any court of competent jurisdiction.

We concluded that "[t]his language makes it clear that 'any interested party' is allowed to compel proper assessment of all real estate in his home county. . . ." *Tug Valley, supra,* at 101, 261 S.E.2d at 170.

We addressed the very question raised by appellees in *Killen, supra,* and held at ——, 295 S.E.2d at 709: "In the future, taxpayers who claim that they are being overassessed in relation to other taxpayers may not have their assessments reduced *as long as their property is valued at market value.* Instead, they should seek to have the assessments of other taxpayers raised to market value." (emphasis added).

Finally, we stated in reference to the facts in *Kline, supra,* at ——, 326 S.E.2d at 720:

> The present case is somewhat analogous to those situations where an assessor makes a partial reappraisal of property which results in such property receiving a higher value than other property or there is disparate valuation between tax districts. Courts have rather uniformly rejected equal protection and uniformity of taxation arguments in such cases.

Based on the above principles, we find no merit in Oneida's cross assignment of error and reverse the judgment of the Circuit Court of Webster County and remand this case for reinstatement of the tax assessments on appellees' property previously set by the board of review.

Reversed and remanded.

BROTHERTON, Justice, dissenting:

It appears to me that the tail is now wagging the dog in West Virginia property taxation. Our statute requires a county assessor to assess property at its true and actual value, and I would go beyond Syllabus Point 2 and say that the price paid for property in an arm's length transaction is the *best* evidence of actual value. I would not, however, let the quest for true value override the *constitutional* requirement that taxation be equal and uniform. There is neither equality nor uniformity when recent purchasers of property must pay tax based on current value while all other property owners pay tax based on low, outdated assessed values. Where, as in this case, the assessor has made only token attempts to bring similar property up to current value, the assessor is intentionally and systematically undervaluing the other property in violation of Article X, § 1 of the West Virginia Constitution.

While I recognize the need for improving the educational system in West Virginia, this improvement cannot constitutionally be achieved at the expense of a few taxpayers. Appraisal of all property at its true and actual

value must be achieved within the bounds of the "equal and uniform" provision of the constitution. The legislature has required full value assessment, W.Va. Code § 11-3-1 (1983), and the State Tax Commissioner is nearing completion of a statewide reappraisal program. This Court should not interfere in this process, which is legislative and administrative in nature. In my opinion, the holding in this case undermines any effort by the State Tax Commissioner to set uniform values, especially for mineral lands.

More fundamental than interference with the administrative process, however, is the majority's condonation of the discriminatory "reappraisal method" in this case. My legal objections to this system were more fully set out by Justice Neely in his dissent to the opinion in *Kline v. McCloud*, —— W.Va. ——, 326 S.E.2d 715 (1984). For these reasons, I respectfully dissent, and I am authorized to say that Justice Neely joins me.

APPENDIX B

SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA,

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County on the 17th day of July, 1987, the following order was made and entered.

No. 17315

In Re: TAX ASSESSMENTS AGAINST ONEIDA COAL COMPANY, INC.; SHAMROCK COAL COMPANY, INC.; EAST KENTUCKY ENERGY CORPORATION; ALLEGHENY-PITTSBURGH COAL COMPANY

Upon an appeal from a judgment of the Circuit Court of Webster County rendered on November 22, 1985, January 31, 1986, February 20, 1986 and March 21, 1986.

The Court having maturely considered the motion for leave to move to reverse, and the argument and briefs of counsel thereon, is of opinion for reasons stated in writing and filed with the record that there is error in said judgments. It is therefore considered and ordered by the Court that the judgments of the Circuit Court of Webster County rendered on November 22, 1985, January 31, 1986, February 20, 1986 and March 21, 1986, be, and the same are hereby, set aside, reversed and annulled, and that the appellant do recover of and from the appellees its costs about the prosecution of his appeal in

this Court in this behalf expended. AND this action is remanded to the Circuit Court of Webster County for reinstatement of the tax assessments on appellees' property previously set by the board of review, and further in accordance with the principles stated and directions given in the written opinion aforesaid and further according to law; all of which is ordered to be certified to the Circuit Court of Webster County.

The syllabus of points adjudicated, prefixed to the written opinion prepared Per Curiam, was concurred in by Chief Justice McGraw, and Justices Neely, Miller, and McHugh. Justice Brotherton dissents and would affirm the trial judge.

A True Copy

Attest: /s/ Ancil G. Ramey
Clerk
Supreme Court of Appeals

APPENDIX C

SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA,

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County on the 10th day of November, 1987, the following order was made and entered.

No. 17315

In Re: TAX ASSESSMENTS AGAINST ONEIDA COAL COMPANY, INC.; SHAMROCK COAL COMPANY, INC.; EAST KENTUCKY ENERGY CORPORATION; ALLEGHENY-PITTSBURGH COAL COMPANY

The Court having maturely considered the petition for rehearing and reargument filed in the captioned case is of opinion to, and doth hereby deny the prayer of the petition and doth order that the final order entered herein be made absolute and certified as heretofore directed.

A True Copy

Attest: /s/ Ancil G. Ramey
Clerk
Supreme Court of Appeals

APPENDIX D

IN THE CIRCUIT COURT OF
WEBSTER COUNTY, WEST VIRGINIA

IN RE:

Civil Action #2532

ALLEGHENY PITTSBURGH COAL COMPANY,
a corporation,

Civil Action #78-C-33

ALLEGHENY PITTSBURGH COAL COMPANY,
a corporation,

Civil Action #79-C-38

ALLEGHENY PITTSBURGH COAL COMPANY,
a corporation,

Civil Action #80-C-59

ALLEGHENY PITTSBURGH COAL COMPANY,
a corporation,

Civil Action #81-C-39

ALLEGHENY PITTSBURGH COAL COMPANY,
a corporation,

Civil Action #82-MISC-26

ALLEGHENY PITTSBURGH COAL COMPANY,
a corporation,

Civil Action #84-MSC-8

ALLEGHENY PITTSBURGH COAL COMPANY,
a corporation,

Civil Action #84-MSC-9

ALLEGHENY PITTSBURGH COAL COMPANY,
a corporation,

Civil Action #84-MSC-8

EAST KENTUCKY ENERGY CORPORATION,

Civil Action #84-MSC-9

EAST KENTUCKY ENERGY CORPORATION,

and

Civil Action #85-MSC-20

EAST KENTUCKY ENERGY CORPORATION

ORDER

These matters, consolidated before this Court by agreement of the parties, came before the undersigned upon appeal by the petitioners, corporate land owners and real estate taxpayers in Webster County, West Virginia, from the decision and order of the County Commission of Webster County, sitting as the Board of Equalization and Review, by which decision and order the assessment of petitioners' interest in the subject tracts and parcels of real estate, as fixed by the Assessor of Webster County, for the tax years in question was sustained.

The real estate in question consists of various tracts and parcels of surface, fee and mineral estate situate in Webster County, West Virginia. The various parcels of real estate of each of the petitioners, as will hereinafter appear, when combined as single parcels make up large boundaries.

Although the real estate of each of these petitioners is not identical to that of all other real estate in Webster County, it appears that petitioners' real estate is substantially similar to the real estate of the others in topography, location, access, development, mineral content and forestation, and that the petitioners' real estate is substantially similar to adjacent and contiguous tracts and parcels of real estate owned by others.

The petitioners, individually and collectively, contend that their real estate has been systematically valued,

assessed and taxed in violation of the "equal and uniform" requirement of Article X, Section 1 of the Constitution of West Virginia. They further maintain that, though the real estate owned by them is substantially the same as adjacent and contiguous real estate owned by others, the Assessor and the Board of Equalization and Review, by sustaining the assessment of petitioners' real estate, have systematically valued, assessed and taxed petitioners' real estate at a rate well in excess of the rate applied to adjacent and contiguous owners.

The petitioners assert that the rate of their respective valuations and assessments not only exceeds the rate of assessment applied to the real estate of adjoining and contiguous owners, but is also valued at approximately double the per acre value established by the 1975 appraisement of the State Tax Commissioner of West Virginia for substantially similar Webster County real estate. They further maintain that while their real estate is valued, and consequently assessed and taxed, at a per acre rate approximately twice that of the Tax Commissioner's 1975 appraisement for similar Webster County real estate, substantially similar parcels of adjacent and contiguous real estate owned by others is valued, assessed and taxed at a per acre rate considerably less than that applied to the petitioners and in fact less than the per acre rate for similar Webster County property by application of the Tax Commissioner's 1969 guide for the valuation and appraisal of coal properties.

Finally, the petitioners assert that the Assessor, over a period of years, has systematically valued, assessed and taxed petitioners' real estate at an excessive rate while refusing to increase to a like rate the assessment of substantially similar real estate lying adjacent and contiguous to that of petitioners, but owned by others.

The respondents contend that petitioners' real estate is properly valued, assessed and taxed.

THE FACTS

An examination of the evidence adduced before the Board of Equalization and Review, including transcribed testimony and designated exhibits, all of which were stipulated by the parties, reveals that the East Kentucky Energy Corporation, hereinafter referred to as East Kentucky, the petitioner in Civil Actions 84-MSC-8, 84-MSC-9, and 85-MSC-20, is a corporation organized under the laws of the Commonwealth of Kentucky, authorized to hold property and do business in West Virginia with its principal place of business at Glade Springs, Daniels, West Virginia.

It further appears that East Kentucky, by virtue of the deed of Allegheny Pittsburgh Coal Company dated July 15, 1982, and of record in the Office of the Clerk of the County Commission of Webster County, West Virginia, in Deed Book 195, at Page 318, is the successor in title to certain real estate formerly titled in the name of the Allegheny Pittsburgh Coal Company, the petitioner in Civil Actions 2532, 78-C-33, 80-C-59, 81-C-39, 82-MSC-26, 84-MSC-8, and 84-MSC-9, hereinafter referred to as Allegheny Pittsburgh, consisting of fee and mineral and sundry tracts of land situate on the waters of Birch River and Laurel Creek, in Glade District of Webster County, West Virginia.

The sum of Twenty-Nine Million, Eight Hundred Forty-Two Thousand, Five Hundred Dollars ($29,842,500.00), was the consideration declared in the deed from Allegheny Pittsburgh to East Kentucky.

The real estate conveyed to East Kentucky by Allegheny Pittsburgh had earlier been conveyed to Allegheny Pittsburgh by deeds dated September 1, 1984, September 19, 1974, and October 21, 1974 from Raymond C. Desrosier, and of record in the Clerk's Office in Deed Book 170, at Pages 510, 515 and 518, respectively and by deed dated October 2, 1974, from Ernest A. Desrosier et al,

and of record in Deed Book 170, at Page 500. The total consideration declared in the deeds to Allegheny Pittsburgh was Twenty-Four Million, Six Hundred Twenty-Four Thousand, Five Hundred Dollars ($24,624,500.00).

During the period from 1975 through 1984, the real estate was assessed as is set forth in stipulated "Exhibit C" copied and incorporated herein. The assessment for the year 1985 was identical to that of 1984.

From Exhibit C it appears that the petitioners, East Kentucky and its predecessor in title, Allegheny Pittsburgh, were, from 1975 through 1984, assessed for ad valorem taxes on nineteen tracts of fee, mineral and surface real estate.

The 1975 unweighted average per acre assessment of the nineteen tracts listed in Exhibit C, now owned by the petitioner, East Kentucky, was $66.93. The unweighted average per acre assessment in 1976 was $1,084.67, and in 1984, $1,209.66 per acre, for the nineteen parcels.

If parcels 4R-67, a 3.75 acre fee parcel, assessed in 1984 at $2,258.67, per acre, 4Q-6, a 1.5 acre surface parcel, assessed in 1984 at $1,540.00, per acre, 4Q-7, a 1.75 acre surface parcel, assessed in 1984 at $2,640.00, per acre, 4Q-71-1, a 00.31 acre surface parcel, assessed in 1984 at $4,967.74, per acre, 4Q-91, a 2.36 acre fee parcel, assessed in 1984 at $2,936.44, per acre, and 3P-12, a 5.1 acre parcel, less coal, assessed in 1984 at $272.55, per acre, are deleted from the nineteen parcels listed, the unweighted average per acre assessment of the remaining thirteen parcels is $643.71, including therein a 4,287 acre fee parcel, less oil and gas, with a 1984 per acre assessment of $3,109.54.

If parcel 4Q-16, an 83.5 acre mineral parcel, assessed in 1984 at $65.87, per acre, a per acre assessment roughly equivalent to that of a majority of the parcels listed in the Exhibit B and G comparables, discussed

EXHIBIT C

EAST KENTUCKY ENERGY CORP. PROPERTIES

ID	Plat No.	Land Book Entry	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	% Increase Assessments 1975-1984
2	4Q-16	83.5 A. Min.	1,260	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,500	
		Laurel Creek	(15.09)	(59.89)	(59.89)	(59.89)	(59.89)	(59.89)	(59.89)	(59.89)	(59.89)	(65.87)	337%
3	4P-1	4,287 A. Fee Less	171,490	10,889,190	10,889,190	10,889,190	10,889,190	10,889,190	10,889,190	10,889,190	10,889,190	13,330,580	
		O & G-Laurel Creek	(40.00)	(2,540.05)	(2,540.05)	(2,540.05)	(2,540.05)	(2,540.05)	(2,540.05)	(2,540.05)	(2,540.05)	(3,109.54)	7674%
4		620 A. Coal	15,500	217,000	217,000	217,000	217,000	217,000	217,000	217,000	217,000	238,700	
		Birch Waters	(25.00)	(350.00)	(350.00)	(350.00)	(350.00)	(350.00)	(350.00)	(350.00)	(350.00)	(385.00)	1440%
5	4Q-15	35.5 A. Fee	1,260	17,600	17,600	17,600	17,600	17,600	17,600	17,600	17,600	19,360	
		Laurel Creek	(35.49)	(495.77)	(495.77)	(495.77)	(495.77)	(495.77)	(495.77)	(495.77)	(495.77)	(543.35)	1437%
6	3Q-5	1,335 A. Fee	51,230	654,200	654,200	654,200	654,200	654,200	654,200	654,200	654,200	719,620	
		Birch & Beaver Cr.	(38.37)	(490.04)	(490.04)	(490.04)	(490.04)	(490.04)	(490.04)	(490.04)	(490.04)	(539.04)	1305%
7	3Q-9	21.5 A. Fee	770	10,780	10,780	10,780	10,780	10,780	10,780	10,780	10,780	11,860	
		Laurel Creek	(35.81)	(501.40)	(501.40)	(501.40)	(501.40)	(501.40)	(501.40)	(501.40)	(501.40)	(551.63)	1441%
8	4R-67	3.75 Fee	550	7,700	7,700	7,700	7,700	7,700	7,700	7,700	7,700	8,470	
		Welch Glade	(146.67)	(2,053.33)	(2,053.33)	(2,053.33)	(2,053.33)	(2,053.33)	(2,053.33)	(2,053.33)	(2,053.33)	(2,258.67)	1440%
9	4Q-6	1.5 A. Surface	150	2,100	2,100	2,100	2,100	2,100	2,100	2,100	2,100	2,310	
		Birch Waters	(100)	(1,400)	(1,400)	(1,400)	(1,400)	(1,400)	(1,400)	(1,400)	(1,400)	(1,540)	1440%
10	4Q-7	1.75 A. Surface	300	4,200	4,200	4,200	4,200	4,200	4,200	4,200	4,200	4,620	
		Birch Waters	(171.43)	(2,400)	(2,400)	(2,400)	(2,400)	(2,400)	(2,400)	(2,400)	(2,400)	(2,640)	1440%
11	4Q-71-1	00.31 A. Surf.	100	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,540	
		Welch Glade	(322.58)	(4,516.13)	(4,516.13)	(4,516.13)	(4,516.13)	(4,516.13)	(4,516.13)	(4,516.13)	(4,516.13)	(4,967.74)	1440%
12	45-91	2.36 A. Fee	450	6,300	6,300	6,300	6,300	6,300	6,300	6,300	6,300	6,930	
		Welch Glade	(190.68)	(2,669.49)	(2,669.49)	(2,669.49)	(2,669.49)	(2,669.49)	(2,669.49)	(2,669.49)	(2,669.49)	(2,936.44)	1440%
13		100 A. Coal	1,500	31,500	31,500	31,500	31,500	31,500	31,500	31,500	31,500	34,650	
		Beaver Creek	(15.00)	(315)	(315)	(315)	(315)	(315)	(315)	(315)	(315)	(346.50)	2210%
14	3P-15	540 A. Fee	13,500	396,900	396,000	396,000	396,000	396,000	396,000	396,000	396,000	436,590	
			(25)	(735)	(735)	(735)	(735)	(735)	(735)	(735)	(735)	(808.50)	3134%
15	4Q-15	82.48 A. Surf.	2,000	22,500	22,500	22,500	22,500	22,500	22,500	22,500	22,500	24,750	
		Laurel Creek	(24.75)	(272.79)	(272.79)	(272.79)	(272.79)	(272.79)	(272.79)	(272.79)	(272.79)	(300.08)	1138%
16		100 A. Min.	1,500	31,500	31,500	31,500	31,500	31,500	31,500	31,500	31,500	34,650	
		Beaver Creek	(15)	(315.00)	(315.00)	(315.00)	(315.00)	(315.00)	(315.00)	(315.00)	(315.00)	(346.50)	2210%
17	3P-14	48.5 A. Surf.	850	20,160	20,160	20,160	20,160	20,160	20,160	20,160	20,160	22,180	
		Beaver Creek	(17.53)	(415.67)	(415.67)	(415.67)	(415.67)	(415.67)	(415.67)	(415.67)	(415.67)	(457.32)	2510%
18	3P-12	5.1 A. Less Coal	70	1,260	1,260	1,260	1,260	1,260	1,260	1,260	1,260	1,390	
		Beaver Creek	(13.73)	(247.06)	(247.06)	(247.06)	(247.06)	(247.06)	(247.06)	(247.06)	(247.06)	(272.55)	1886%
19	3P-11	25 A. Less Min.	500	10,920	10,920	10,920	10,920	10,920	10,920	10,920	10,920	12,010	
		Beaver Creek	(20)	(436.80)	(436.80)	(436.80)	(436.80)	(436.80)	(436.80)	(436.80)	(436.80)	(480.40)	2302%
20	3P-13	12.75 A. Surf.	250	5,040	5,040	5,040	5,040	5,040	5,040	5,040	5,040	5,540	
		Beaver Creek	(19.61)	(395.29)	(395.29)	(395.29)	(395.29)	(395.29)	(395.29)	(395.29)	(395.29)	(434.51)	2116%

Note: Figures given to the left of each parcel reflect total assessment for that tract for year shown [upper figure], and per-acre assessment for that tract [lower figure in parentheses].

herein, the unweighted per acre assessment of the remaining twelve parcels rises to $691.86.

Although an unweighted per acre assessment of either $691.86, or $643.71, greatly exceed the per acre assessments, weighted or unweighted, of the Exhibit B and G comparables, the unweighted per acre assessments are not reflective of the true assessment of petitioner's thirteen largest parcels.

The weighted average per acre assessment of these parcels, determined by dividing the total assessed value of the thirteen parcels, $14,896,007.98, by the total acreage, 7,291.23, for 1984 is $2,043.00. During the years 1976 through 1983, the weighted average per acre assessment for these parcels was $1,688.64. For 1975, $35.88.

The petitioners, Allegheny Pittsburgh and East Kentucky, in support of their contention, that the real estate in question was, during a period from 1975 through 1985, systematically assessed in violation of the "uniform and equal" provision of the West Virginia Constitution Article 10, Section 1, offered in evidence stipulated "Exhibit B". This exhibit, hereinafter set forth, contains a list of nine parcels of comparable real estate, consisting of fee, surface and one parcel less the coal, situate in Glade District, Webster County, West Virginia, reflecting the total per acre assessment, in parenthesis, for each tract.

An examination of Exhibit B reveals that the 1975 unweighted average per acre assessment for the nine comparable parcels listed therein was $27.63. The unweighted average per acre assessment in 1976 was $36.32, in 1982, $118.35 and in 1984, $121.04.

The parcels included in the Exhibit B comparables range in size from the largest, a 5,558 acre fee parcel, assessed as parcel 2L-5 to M. B. Partners LTD, and situate on Birch River, to the smallest, a 13.6 acre fee par-

EXHIBIT B
Comparable Property List
[Glade District, Webster County, West Virginia]

ID	Plat No.	Land Book Entry	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	% Increase in Assessments 1975-1984
1	3Q-1	KNIGHT, James G. & L. K. INK 1,300 Fee Beaver Crk.	45,000 (35.00)	65,000 (50.00)	65,000 (50.00)	65,000 (50.00)	65,000 (50.00)	65,000 (50.00)	65,000 (50.00)	71,500 (55.00)	71,500 (55.00)	78,650 (60.50)	73%
2	4Q-13	CARPENTER, Dorsey R. & Dollie 357.66 Ac. Fee Gauley & Birch	11,970 (33.47)	19,200 (53.68)	19,200 (53.68)	19,200 (53.68)	19,200 (53.68)	19,200 (53.68)	28,400 (79.41)	28,400 (79.41)	28,400 (79.41)	28,400 (79.41)	137%
3	4N-13	MAYSE, Wayne & J. E. HOPKINS 173.0 Ac. Surf. Slab Camp Run	2,950 (17.05)	3,460 (20.00)	3,460 (20.00)	3,460 (20.00)	3,460 (20.00)	3,460 (20.00)	3,460 (20.00)	3,810 (22.02)	3,810 (22.02)	4,190 (24.22)	42%
4	2N-8	TIOGA LUMB. CO. 263.2 Fee Birch River	9,210 (34.99)	9,210 (34.99)	13,150 (49.96)	13,150 (49.96)	13,150 (49.96)	13,150 (49.96)	13,150 (49.96)	14,470 (54.98)	14,470 (54.98)	15,910 (60.45)	73%
5	3P-10	ANR COAL DEVELOPMENT CO. 50 Less Coal Beaver Creek	1,000 (20.00)	1,000 (20.00)	1,000 (20.00)	1,000 (20.00)	2,750 (55.00)	5,500 (110.00)	5,500 (110.00)	5,500 (110.00)	5,500 (110.00)	5,500 (110.00)	450%
6	2L-5	M. B. PARTNERS, LTD.—5,558 Fee Birch River	139,400 (25.08)	278,820 (50.17)	278,820 (50.17)	278,820 (50.17)	278,820 (50.17)	278,820 (50.17)	278,820 (50.17)	305,690 (55.00)	305,690 (55.00)	336,250 (60.50)	141%
7	3R-7	DEITZ, R. R. (Trustee) 486.94 Fee Strouds Creek	17,040 (34.99)	24,350 (50.01)	24,350 (50.01)	24,350 (50.01)	24,350 (50.01)	24,350 (50.01)	24,350 (50.01)	26,790 (55.02)	26,790 (55.02)	29,460 (60.50)	73%
8	3P/1-6-7-8	TULLY, J. M. 196.5 Ac. Surf. Beaver Creek	2,940 (14.96)	2,940 (14.96)	3,940 (20.05)	3,940 (20.05)	14,700 (74.81)	14,700 (74.81)	14,700 (74.81)	16,170 (82.29)	16,170 (82.29)	16,170 (82.29)	450%
9	3P-9	ANR COAL DEVELOPMENT CO. 13.6 Fee, Bvr. Ck.	450 (33.09)	450 (33.09)	450 (33.09)	450 (33.09)	3,750 (275.74)	7,500 (551.47)	7,500 (551.47)	7,500 (551.47)	7,500 (551.47)	7,500 (551.47)	1567%

NOTE: Figures given to the left of each parcel reflect total assessment for that tract for year shown (upper figure) and per-acre assessment for that tract (lower figure in parentheses).

cel assessed to ANR Coal Development Co. as parcel 3P-9, and situate on Beaver Creek. With exception of a 50 acre parcel, 3P-10, also assessed to A.N.R. Coal Development Co., the remaining six parcels included within the Exhibit B comparables are all parcels exceeding 100 acres in size, the largest of the six being parcel 3Q-1, a 1,300 acre fee parcel situate on Beaver Creek.

In 1975, when the unweighted average per acre assessment for Exhibit B comparables stood at $27.63, parcel 3Q-1, a 1,300 acre fee parcel on Beaver Creek, assessed in the names of James G. Knight and L. K. Ink, then assessed at $35.00 per acre, bore the highest assessment. Parcel 3P/1-6-7-8, a 196.5 acre surface tract on Beaver Creek, assessed to J. M. Tully, was low at $14.96, per acre. Parcel 2L-5, the M. B. Partners, LTD, 5,558 acre fee parcel was then assessed at $25.08 per acre. Parcel 3P-9, the 13.6 acre parcel now assessed to A.N.R. Coal Development Co., was then assessed at $33.09 per acre.

Between 1975 and 1984 the unweighted average per acre assessment of the Exhibit B comparables rose from $27.63 to $121.04. In 1984, parcel 4N-13, a 173.0 acre surface tract on Slab Camp Run, assessed to Wayne Mayse and J. E. Hopkins, was assessed at $24.22 per acre. The 13.6 acre parcel assessed to A.N.R. Coal Development Co. bore the high assessment of the Exhibit B comparables at $551.47 per acre.

Between 1975 and 1984, the James G. Knight and L. K. Ink, 1,300 acre tract, parcel 3Q-1, per acre assessment rose from $35.00, to $60.50. The assessment on the M.B. Partners LTD, 5,558 acre fee tract rose during this period from $25.08, to $60.50, per acre.

With the exception of parcels 3P-9 and 3P-10, both now assessed to A.N.R. Coal Development Co., at $551.47 and $110.00 per acre respectively, neither of the Exhibit B comparables rose to a per acre assessment in excess of $85.00, between 1975 and 1984.

A computation of the weighted average per acre assessment of the Exhibit B comparables reveals that these parcels, consisting of a total of 8,398.9 acres, were assessed at $27.38 per acre in 1975. In 1976 the weighted average per acre assessment of the Exhibit B comparables rose to $48.15 and in 1982, to $57.13 per acre.

By 1984 the 8,398.9 acres making up the Exhibit B comparables had a total assessed value of $522,030.00, giving a weighted average per acre assessment of $62.15.

While the weighted average per acre assessment of the thirteen largest parcels of Allegheny Pittsburgh-East Kentucky real estate was rising from $35.88, in 1975, to $1,688.64, in 1976, to $2,043.00 in 1984, the weighted average per acre assessments of the Exhibit B comparables, during the same years were $27.38, $48.15, and $62.15.

Although the petitioner's per acre assessment on parcel 4P-1, a 4,287 acre tract, less oil and gas, situate on Laurel Creek rose from $40.00 per acre in 1975, to $3,109.54 in 1984, the per acre assessment of the M.B. Partners, LTD, fee tract of 5,558 acres on Birch River, parcel 2L-5 rose from $25.08 in 1975 to only $60.50 in 1984. The per acre difference in 1984 assessment between these two parcels is $3,049.04.

In addition to the Exhibit B comparables the parties further stipulated and admitted as evidence, Exhibit G, E. V. Morton's updated list of comparable parcels of real estate.

The Exhibit G comparables, consisting of fifty parcels in 1975, and forty-eight parcels in 1984, is a list of parcels of real estate consisting largely of fee and surface parcels of various size but also including parcels of oil and gas and fee less the coal, all situate in Webster County, West Virginia, and substantially similar to petitioner's real estate.

The 1975 unweighted average per acre assessment of the Exhibit G parcels was $95.61. The unweighted assessment had risen to $145.29 in 1982 and in 1984, $148.91 for the forty-eight parcels then included.

The 1984 unweighted per acre average assessment of the forty-eight parcels included in the Exhibit G comparables included parcels 4Q-24-1, an 8,000 square foot parcel assessed at $2,777.78 per acre and 4Q-8, a .75 acre parcel assessed at $1,106.67, per acre. If these small parcels are omitted from the Exhibit G comparables, the unweighted per acre assessment for the remaining forty-six parcels is $69.20.

An examination of the Exhibit G comparables reveals that the total acreage of the fifty parcels listed in 1975 was 9,928.96. The weighted per acre average assessment for these parcels, with a total assessed value in 1975, of $277,520.00 was then $27.95.

The 1982, weighted per acre average assessment for the Exhibit G comparables, then consisting of forty-eight parcels comprising 9,767.76 total acres were $53.20 per acre.

In 1984, the total assessed value of the forty-eight Exhibit G parcels was $569,594.00. The weighted per acre assessed value of the 9,767.76 acres making up the forty-eight parcels listed was $58.31.

Between 1975 and 1984, the weighted per acre average assessment of the Exhibit G comparables rose $30.36, per acre from $27.95, to $58.31, per acre.

A comparison of the Exhibit C, B and G properties, for the tax year 1984, classified according to the interest owned, i.e., surface, fee, mixed or coal, also discloses the inconsistency apparent in a comparison of weighted, per acre, average assessments of these properties.

The 1984, weighted, per acre, average assessment for the Exhibit C surface properties, for instance, was

$423.41, per acre, for seven parcels. Six fee parcels assessed to petitioner, were assessed at $620.62, per acre, three mixed parcels, including the 4,287, acre parcel designated 4P-1, bore a weighted, per acre, average assessment of $2,990.88, while petitioners two coal only parcels listed on Exhibit C, were assessed at $379.65, per acre.

In contrast, the 1984, weighted, per acre, average assessment of the Exhibit B surface properties was $55.10, per acre, the six fee parcels $56.05, and the single mixed interest parcel, $110.00, per acre.

The 1984, weighted, per acre, average assessment for the Exhibit G comparables were: surface, twenty-two parcels, $55.98, per acre, fee, nineteen parcels, $61.32, per acre, and mixed, six parcels, $65.62, per acre. There are no coal only parcels listed among the Exhibit G comparables.

It is evident from the comparison of the weighted, per acre, average assessments of the petitioners' properties with the comparable properties listed in Exhibit B and G, whether the average assessments be of all the properties listed, without regard to the interest in real estate assessed, or the average, per acre, assessment, according to the particular interest assessed, that the increase in assessment of the properties listed on Exhibit C is substantially greater than the increased assessments of the Exhibit B and G properties.

A comparison of the assessment of petitioners' properties, Exhibit C, with the assessment of the Exhibit B and G properties, between the years of 1976, and 1984, likewise reveals a pattern of substantially greater assessments applied to petitioners' properties than was applied to the Exhibit B and G properties.

The transcripts of testimony, adduced in the various hearings before the Board of Equalization and Review, reveal that, though the assessor was aware that petitioners' real estate was being assessed at a rate substan-

tially greater than the assessment applied to similar real estate owned by others, it was the assessor's contention that the real estate of the petitioner, East Kentucky, and that of its predecessor in title, Allegheny Pittsburgh, was properly assessed at fifty per cent (now sixty) of the value set forth in the declaration of consideration appearing in petitioners' deeds.

The assessor maintained that all recently transferred property was uniformly and equally assessed at fifty per cent (now sixty) of the value declared in the most recent deed of conveyance to a taxpayer. According to the assessor, the declared consideration set forth in a deed conveying real estate in an arms length transaction between a willing buyer and a willing seller was the most accurate reflection of the market value of the real estate conveyed.

The assessor, though recognizing the fact that some real estate in Webster County, including that of the petitioners, was being assessed at a higher rate as a consequence of the consideration declared in the taxpayers deed, asserted that the assessment of property which had not been recently transferred, and therefore had a low, or no, declared value, had nevertheless been increased in assessment periodically, inferentially suggesting that over a period of time equalization would be accomplished through periodic increases in the assessment of property which had not recently changed hands. In support of this position, increases in the assessment of Webster County real estate, between the years of 1975, and 1984, were noted.

As examination of the increase in assessments of the Exhibit B, G and C properties between 1975, and 1984, discloses that the weighted, per acre, average assessment of the Exhibit B comparables increased a total of $34.77, per acre, over the nine year period. A yearly increase of $3.86, per acre.

The assessment of the Exhibit G properties, during this period, rose a total of $30.36, per acre, a yearly increase of $3.37 per acre.

By comparison, the petitioners' weighted, per acre, average assessment increased by $2,007.12, per acre, during the same period. In contrast to the yearly, per acre, average increases in the assessments of the Exhibit B and G properties, the assessment of petitioners' properties increased an average of $223.01, per acre, per year.

The increased assessment of the Exhibit B properties was 0.017, per cent and that of the Exhibit G properties was 0.015, per cent of the increase in the assessment of petitioners' properties.

During this period, the difference in the increase in the weighted, per acre, assessment between the Exhibit B and petitioners' (Exhibit C) properties was $1,908.85, per acre. The difference in increase in the weighted per acre assessment between the Exhibit G and Exhibit C properties was $1,984.69.

Though the assessor appeared to imply that increased assessments of the properties assessed low would eventually result in equalization, it is worthy of note that should the increased assessment applied to the Exhibit B properties between 1975 and 1984 be applied in like amount in the future a period of 513.17 years would be required for equalization with petitioners present assessment.

Equalization of the Exhibit C and Exhibit G properties, at the rate of increased assessment applied to the Exhibit G comparables over the past ten years would require a period of 588.92 years for equalization.

Should increased assessments be uniformly applied to the Exhibit B, C and G in the future equalization would, of course, never be accomplished. In fact, the difference between the assessments would become greater, not less.

In addition to Exhibits B, C and G the parties stipulated and agreed to the admission of Exhibit A, a map showing the real estate of the petitioners and that used as comparables in Exhibits B and G. From Exhibit A it is obvious that the real estate of the petitioners and that of contiguous, adjoining and adjacent landholders to which it is compared is substantially the same.

From the evidence it appears that in making the contested assessments the assessor did not compare the various features of the real estate to which the high assesment was applied with the various features of land assessed at a much lower rate.

It does not appear from the evidence that petitioners' Exhibit C real estate is topographically dissimilar to the real estate listed in Exhibits B and G. The assessor did not procure, examine or consider reports of engineers, surveyors, timbermen, oil and gas developers, real estate brokers or agents, or other persons possessing expertise in any particular field relating to real estate values in assessing petitioners' real estate.

The questioned assessments were not based upon the presence of economically minable or removable coal, oil, gas or harvestable timber in or upon petitioners' real estate, as compared to an absence of the same in or upon the Exhibit B or G properties.

The questioned assessments were not based upon present use or immediately foreseeable economic development of petitioners' real estate. The assessor did not consider the size, shape, location, access, or availability of public highways, sewers, water, gas or electricity in assessing either the petitioners' real estate or the real estate listed in the Exhibit B or G comparables.

The sole basis for the assessment of petitioners' real estate was, according to the assessor, the consideration declared in petitioners' deeds.

Upon examination, the assessor did not contend that petitioners' assessment was the result of unique or valuable features peculiar only to petitioners' land. The assessor admitted on examination that she did not, in making her appraisment, physically inspect or view the petitioners' real estate, that she had not compared it to adjacent or contiguous tracts, that no scientific examinations or tests had been made or performed, by her or at her request or direction, and that appraisements had not been sought or considered, including appraisements prepared by the State Tax Commissioner of West Virginia for use by assessors, in the performance of the duties of that office.

The assessor admitted on examination that, though she was aware of and had access to the Tax Commissioner's guide for assessors, in the valuation of coal appraisals and coal deposits, Exhibits H and I, had not used or attempted to use or apply these materials in the contested assessments.

The record does not disclose that the assessor ever, in making assessments at issue before this Court made use of any materials, guides, services or assistance available through the State Tax Commissioner's Office.

The evidence before the undersigned discloses that in 1975 the assessment of the real estate now owned by petitioner, totaling 7,306 acres, was $488,990.58.

After the property was conveyed to the petitioner, Allegheny Pittsburgh, during the autumn of 1974, the assessment of this real estate, on a purchase price of $24,624,500.00 rose to $12,312,250.00 in 1976.

Following the conveyance of this real estate by the petitioner, Allegheny Pittsburgh, to the petitioner, East Kentucky, on July 15, 1982, for a declared consideration of $29,842,500.00, the assessment was increased to $14,921,250.00, in 1984.

A comparison of the assessment history of the Exhibit B properties for the same period reveals that this real estate, a total of 8,398.9 acres, was assessed in 1975, at $229,961.88. In 1976, the total assessment was increased to $404,407.03, and in 1982 to the sum of $522,030.00.

The assessment for Exhibit G comparables, a total of 9,767.76 acres was $277,520.00 in 1975. The assessment of this property was increased to $519,644.83, in 1982, and in 1984, to $569,594.00.

A comparison of the Exhibit C, petitioners, and Exhibit B assessments for 1975 discloses that the Exhibit C assessment was $259,028.70 greater than the Exhibit B assessment. This difference increased to $11,907,843.00, in 1976, and in 1984, to $14,399,220.00.

The Exhibit C assessment was $211,470.58 greater than the Exhibit G assessment in 1975. The difference increased to $11,792,606.00 in 1976 and to $14,351,656.00 in 1984.

These differences in assessment have been protested, first by the petitioner, Allegheny Pittsburgh, and now by the petitioners, East Kentucky, since 1976, and are alleged by the petitioners to be violative of the "equal and uniform" provision of West Virginia Constitution Article X, Section 1.

DISCUSSION

Article X, Section 1, of the West Virginia Constitution, titled *Taxation and Finance* provides, in part, that ". . . taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value, to be ascertained as directed by law."

Article X, Section 1, further provides, in part, that "[n]o one species of property from which a tax may be collected shall be taxed higher than any other species of property of equal value . . .".

The West Virginia Supreme Court of Appeals in a case styled, Killen v. Logan County Com'n., W.Va., 295 S.E. 2d 689, at Page 693, characterized Article X as being ". . . both a grant of power to the Legislature to tax . . ." by virtue of the provisions of West Virginia Constitution Article 10, §§1, 5, and 9, ". . . and a limitation upon that power."

The limitation according to the Court lies in the requirement that the taxation contemplated be "equal and uniform" and in the concept and provision that taxation should be equal on properties of equal value.

Article X, Section 1, according to our Court contemplates the establishment of a system of property taxation in which property, "both real and personal" is subjected to "equal and uniform" taxation, as "directed by law".

The matter of "equal and uniform" property taxation has been addressed by the Legislature through the enactment of various statutes for the implementation of the process of taxation. This process contemplates a statewide system of taxation in which the tax is to be equally and uniformly applied in proportion to the value of the property taxed.

The Supreme Court in Killen v. Logan County Com'n., *supra*, described the process of taxation as consisting of the elements of valuation and levying. Valuation is described as the act of assigning a value to each property to be taxed. Once the value is assigned to a particular property a tax, at a designated rate, is levied, or charged, against the property.

The responsibility or valuation, assigning or placing the value at which property is to be taxed, is that of the county assessor. This aspect of the process of taxation is known as assessment and is the aspect of the process of taxation at issue before this Court.

Once the county assessor establishes a value for a property, assesses it, for taxation, various levying bodies, including the State, the county commissions, local school boards and municipalities determine the rate, or amount, of tax to be levied or collected for each one hundred dollars value assessed. This aspect of the taxation process, known as levying, is not at issue before this Court.

W.Va. Code, § 11-3-1, provides that "[a]ll property shall be assessed (by the assessor) annually as of the first day of July at its true and actual value; that is to say, at the price for which such property would sell if voluntarily offered for sale as such property, the value of which is sought to be ascertain, is usually sold, and not the price which might be realized if such property were sold at a forced sale . . .".

Though our Supreme Court in Kemp v. Boyd, W.Va., 275 S.E.2d at 303, recognized that the primary responsibility for the execution of the duty of assessing county property for taxes, ". . . a task requiring foresight, cooperation and detailed labor . . .", rests upon the county assessors and commissioners, the Court, in Tug Valley Recovery Center, Inc. v. Mingo Cty. Comm., W.Va., 261 S.E.2d 165, at page 173, in noting the technical and complex nature of the assessment of real estate values, particularly mineral estates, concluded that the task of assessment was ". . . lightened to a great extent by the provisions of W.Va. Code § 18-9A-11 . . ." which ". . . provides that the State Tax Commissioner is to make an appraisal of all mineral and surface estates in West Virginia, and *that appraisal is to serve as the basis for determining true and actual value for all assessment purposes.*"

The Court in stating that ". . . once the Tax Commissioner's appraisal has been made . . . it is incumbent upon the circuit court, (upon an appeal) as it would be upon the county commission and the assessor, to set the assessed value of all parcels of land at the amount estab-

lished by the State Tax Commissioner.", appears to have attached a substantial significance to the Tax Commissioner's appraisal.

It would seem that the former assessor, who during her testimony acknowledged receipt of the Tax Commissioner's appraisal of Webster County coal properties, obviously did not attach the same significance, in view of the fact that after receipt of the appraisal it was placed in a drawer where it remained unused and abandoned until the day of the hearing. The present occupant of the office seems to have adopted substantially the same position as that of his predecessor.

The responsibility of the Tax Commissioner to provide executive oversight for the assessor, by furnishing property appraisals and correcting incorrect assessments as provided in W.Va. Code § 18-9A-11, was emphasized in Killen v. Logan County Com'n., *supra*, at page 694, and again in a case syled In Re: Tax Assess. Against Pocahontas Land Co., 303 S.E.2d 691 (W.Va. 1983), at page 699. Our Court in Killen, at page 694, stated that "[t]he state tax commissioner has the duty of supervising all of the valuation process. W.Va. Code § 11-1-2; W.Va. Code § 18-9A-11."

Though the interrelation between the duties of an assessor and those of the Tax Commissioner is apparent from an examination of appropriate statutory provisions and cases decided by our Court with reference thereto, the functions of the two offices in the valuation process are different.

In the process of valuation one of the duties of the Tax Commisioner is that of *appraisal*, while that of the assessor is that of *assessment*. In footnote 5, at pages 694 and 695, our Court, in the Killen case *supra*, defined an appraisal as generally meaning ". . . the estimate of value given a particular item or piece of property." An assessment was described as meaning ". . . the listing

and valuation of property for taxation purposes." Both appraisals and ". . . assessments are to be based on true and actual value. W.Va. Code § 11-3-1."

Although the undersigned found no statute or case specifically so stating, it seems, from the statutes and cases examined, that the process of appraisal and assessment contemplated by the Legislature is one in which the State Tax Commissioner has been vested with a general responsibility for the establishment of property values, statewide. The statutes and cases also suggest that the assessor's duty is that of affirmatively examining and assessing each piece of property, equally and uniformly, within his county. If the process works it would seem that property appraisals and assessments, within county borders and statewide would be uniform.

Logic indicates that although the Tax Commissioner may be aware, in general, of the value of machinery, equipment, motor vehicles, boats, dwellings, buildings, land and other property, both from county to county and statewide, it does not follow the Commissioner, with or without the help of his deputies, would be aware of the condition of all the machinery, equipment, motor vehicles, boats, dwellings, buildings and land, any more than he would be aware of the specific characteristics of a particular parcel of land in Webster County.

Though the Tax Commissioner might have general knowledge of the value of Webster County land, without the benefit of examination the Commissioner would not be aware of whether any given tract was level or precipitous, timbered, farmed or waste land, mined or unmined, accessible or inaccessible or any number of things that could add to, or detract from, the value of the land.

It seems that in vesting the assessor's office with the power to assess the Legislature contemplated an assessment process in which the assessor and his deputies, they being county residents, would go into the county and view

the machinery, equipment, motor vehicles, boats, dwellings, buildings, land and other property to be assessed and make a reasoned and rational determination as to value for purposes of assessment. Our Court in Tug Valley Recovery Center, Inc. v. Mingo Cty. Comm. W.Va., 261 S.E.2d 165, at page 173, described "[t]he assessment of real estate value . . ." as ". . . a very technical and complex area . . ." and in Kemp v. Boyd, *supra*, described " . . . the mission of assessing county property for taxes as a task requiring foresight, cooperation and detailed labor."

In a case styled Michael Kline, et al. v. Jim McCloud, et al., 326 S.E.2d 715 (W.Va. 1984), at page 718 of the decision, our Court stated that "[i]n determining the fair market value of a piece of land, a county assessor must 'seek out all information which would enable him to properly fulfill his legal obligation.' *In Re* Shonk Land Co., 157 W.Va. 757, 761, 204 S.E.2d 68, 70 (1974)." In the case at bar it appears from the evidence that the assessment was based solely on the consideration declared in petitioners' deeds. The assessor gave no weight or consideration to the appraisals of the Tax Commissioner, engineering reports presented on behalf of the petitioners, or the appraisals submitted. Instead of seeking out information the assessor seems to have totally refused to consider evidence submitted on behalf of the petitioners.

However, though recognizing the supervisory authority of the Tax Commissioner in the process of property taxation, our Court appears to hold that an assessor, in performing the function of property assessment, is not obliged to simply parrot the appraisals of the Commissioner.

The first step in taxing real property is a determination of "true and actual" value. Kline v. McCloud, *supra*, at page 718. In the Kline case the Court reaffirmed that true and actual value meant fair market value, the selling price on the open market. Quoting In

Re Shonk Land Co., 157 W.Va. 757, at 761, 204 S.E.2d 68, at 70, our Court in Kline, at page 718, stated that: "although the assessor is under the supervision of the state tax commissioner he is not restricted in the search for information leading to the true and actual value of properties to questions formulated by that state official."

The Court thereafter again affirmed its holding in Killen that county assessors were entitled to consult other credible and reliable sources, including the owner's sworn valuation and bona fide appraisals, as a part of the process of assessment, and were not limited to merely following the appraisals of the State Tax Commissioner.

Finally, the Court, citing Crouch v. County Court of Wyoming County, 116 W.Va. 476, 477, 181 S.E. 819 (1935), ". . . recognized that the price paid for real estate . . ." is ". . . a substantial indicia of its true and actual value, so long as the property changed hands in an arm's length transaction . . ." and that although the purchase price paid was not conclusive on the issue of value it is a factor to be considered in an arms length transaction.

From the foregoing it is evident that the assessor of Webster County, in 1976, when the assessment of the petitioner, Allegheny Pittsburgh, was increased, and thereafter, had several courses of action available in the matter of the questioned assessments.

The assessor had the option of basing the assessment, as has been proposed by petitioners, upon the Tax Commissioner's appraisals of Webster County real estate. At that time, 1976, the 1969 appraisal was available, and possibly the appraisal for 1975. The assessor did not use or consider the appraisals available through the Tax Commissioner's office.

In addition, the assessor had the option of assessing the subject real estate at a rate consistent with the as-

sessment of substantially similar adjacent and contiguous properties. This option was likewise rejected.

The assessor at that time and thereafter, could also have assessed the subject property based on a number of factors including the declared consideration, the Tax Commissioner's appraisals, the assessed value of substantially similar real estate, appraisals presented by or secured from private appraisers, the nature, use, access and development of the property together with other factors causing or tending to cause the subject property to be worth more, or less than comparable real estate. This option was likewise rejected by the assessor.

Finally, the assessor had the option, at that time, of assessing petitioner, Allegheny Pittsburgh's, real estate at fifty percent of the consideration declared in the deed. At that juncture the assessment could have been properly made and sustained under the theory that in determining "true and actual" value, for purposes of assessment, the value declared in an arms length transaction substantially indicates the true and actual value of the property conveyed.

At that point, the assessor would have been entitled to the benefit of the general presumption that the valuation was correct, Bankers Pocahontas Coal Company v. County Court of McDowell County, 135 W.Va. 174, 179, 62 S.E.2d 801, 804 (1950), thereby casting upon the taxpayer, the petitioner, the burden of showing by clear and convincing evidence that the assessment was erroneous. In Re: Tax Assessment Against the National Bank of West Virginia at Wheeling, et al., 137 W.Va. 673, 687, 73 S.E.2d 655, 664 (1952), In Re Assessment of Kanawha Valley Bank, 144 W.Va. 646, 109 S.E.2d 649 (1959), In Re Tax Assess. Against Pocahontas Land Co., 303 S.E.2d 691, 699 (W.Va. 1983). Although the 1976 assessment, as is shown by the evidence, exceeded the assessment of substantially similar property, the deviation, at that time could have been upheld as a spo-

radic deviation. However, if an assessor undertakes to base current real estate assessments on the value declared in recent arms length real estate transactions, he must likewise raise the assessment of similar real estate to a like level, whether or not the similar real estate has been recently conveyed.

Though the 1976 assessment of Allegheny Pittsburgh's real estate may have been presumptively correct, at that time, by failing to equalize assessments, that is, to either raise the assessment of comparable properties to a level comparable to petitioners' assessment, or to lower petitioners' assessment to a level comparable that at which substantially similar real estate was being assessed, the assessor failed to achieve equality and uniformity in taxation, as required by Article X, Section 1. Ample opportunity existed between 1976 and 1985 to correct inequality of assessment reflected in Exhibits B, C and G.

Our Court, in Killen v. Logan County Comm'n., *supra*, at page 701, citing R. Blakey, *Report on Taxation in West Virginia* 107 (1930), noted that

> "The success of the general property tax depends upon the quality of the assessments. If assessments are very unequal the foundation of the entire tax structure is unsound. Inequality of assessments means that *those underassessed pay less than their fair share of public expenses* and *those overassessed pay their full share and, in addition, they have to make up for what the underassessed fail to pay.* The greater the inequalities of assessment the greater the inequalities of the taxes and the more grevious the burdens upon those who find it most difficult to meet their obligations. (Emphasis supplied).

In a case decided in 1980, styled, Matter of U. S. Steel Corp., W.Va., 268 S.E.2d 128, at page 132, our Court held that "[w]hile it is true that unintentional, sporadic deviations from an established system are not a sufficient

basis for reversal of an assessment . . . [i]t would be totally unacceptable to allow counties to use two systems of assessment, one for favored taxpayers and one for other." Although the facts in the U. S. Steel case are not identical to those in the case at bar, the principle set forth therein is applicable here.

Though the issue confronting this Court, the assessor, the County Commission and Board of Education of Webster County, has been portrayed in some newspapers as an issue involving the wrongful, and unjustified, refusal of a foreign corporation to pay lawfully assessed and levied taxes, such is not the cases.

The reluctance of the assessor and a Board of Equalization and Review to increase the real estate assessments, and consequently the real estate taxes, of friends and neighbors to a level comparable to the assessment and levy returned against the petitioners, East Kentucky and Allegheny Pittsburgh is understandable. So too is a refusal to lower the assessment of a foreign corporation, especially if to do so has been publicly represented as subjecting the county government and the school system to bankruptcy.

Despite the outcry, however, the evidence presented clearly and convincingly establishes that the assessor, and the Board of Equalization and Review, in sustaining the questioned assessments, have, over a period of ten years, systematically and intentionally assessed the petitioners' real estate, and consequently levied taxes against petitioners' real estate, at a weighted rate per acre of from 5,672.56 to 6,511.06 percent in excess of the weighted rate per acre assessment applied to comparable real estate owned by others and located adjacent, contiguous or near that of the petitioners.

The evidence further shows, and the Court so finds, that the inequality of the assessment of petitioners' real estate and that of comparable tracts has been repeatedly

brought to the attention of the assessor and the Board of Equalization and Review over the ten year period involved.

The evidence also demonstrates, and the Court finds, that as petitioners have repeatedly and consistently protested the inequality of the assessment of their real estate, as compared to the assessments of comparable real estate owned by others, the assessor and Board of Equalization and Review, have just as consistently and repeatedly refused to equalize petitioners assessment downward or to equalize the real estate assessments of others upward, though petitioners' have requested relief in both directions.

Additionally, the evidence discloses, and the Court finds, that the assessor and Board of Equalization and Review have repeatedly refused to consider or give any weight or credence to the evidence tendered by petitioners in their prayer for equal and uniform assessment.

Our Court in the Pocahontas Land Co. case, 303 S.E. 2d 691, at page 699, (W.Va. 1983), held that ". . . where a taxpayer protests his assessment before a board, he bears the burden of demonstrating by clear and convincing evidence that his assessment is erroneous. Once this is done, *it is incumbent upon the taxing authority to place some evidence in the record to show why its assessment is correct.*" (Emphasis supplied).

In the matter before this Court, though the petitioners have demonstrated by clear and convincing evidence that the assessment is erroneous, the taxing authority has not only failed to place evidence in the record to establish the correctness of the assessment, but has totally failed to consider the evidence tendered by the petitioners.

It would seem from a reading of Kline v. McCloud, 326 S.E.2d 715, 719 (W.Va. 1984), that even though an assessor may ". . . supplement the Tax Commissioner's appraisal report with information obtained from property

owners or from recent deed values to determine the value of property without violating the equal and uniform provisions of our State Constitution . . .", if the taxpayer can demonstrate that the real estate of others has been systematically and intentionally undervalued, the taxpayer is entitled to relief under the equal protection clause of the Fourteenth Amendment to the United States Constitution and under the equal and uniform clause of Section 1, Article X of the West Virginia Constitution. Kline v. McCloud, *supra*, at page 724.

It is further held in *Kline*, at page 724, ". . . that the price paid for property in an arm's length transaction, while not conclusive, is relevant evidence of its true and actual value." It seems to be obvious, therefore, that although an assessor is at liberty to base real estate assessments upon values or consideration declared in recent conveyances, if the assessor elects to use recent sales as the basis for the assessment of real estate, he is obligated by the equal protection clause of the Fourteenth Amendment to the United States Constitution and the equal and uniform clause of Section 1, Article X, of the West Virginia Constitution to base the real estate assesssments of substantially similar real estate, whether owned by a corporation or an individual, upon the same or a similar value, depending on certain variables, even though the real estate has not been the subject of a recent conveyance.

The evidence clearly demonstrates, and this Court finds, that though the assessor and Board of Equalization and Review were lawfully entitled to consider the consideration declared in petitioners' deeds, in determining their respective assessments, by intentionally and systematically, failing to either equalize assessments by increasing the assessed value of substantially similar property to the level of petitioners' assessments, or to equalize assessments by lowering petitioners' assessments to the level at which comparable real estate was being as-

sessed, the assessor and Board of Equalization and Review violated the equal and uniform clause of Section 1, Article X of the West Virginia Constitution and the equal protection clause of the Fourteenth Amendment to the United States Constitution.

From the evidence presented, this Court finds that the assessments complained of by petitioners were incorrect. In this circumstance, pursuant to the provisions of West Virginia Code § 11-3-25, the Circuit Court is obligated to "correct the assessment, and fix the property at its true and actual value." Tug Valley Recovery Center, Inc. v. Mingo County Commission, W.Va., 261 S.E.2d 165, 171; Killen v. Logan County Commission, W.Va., 295 S.E.2d 689, 706.

Though our Court, at page 172 of the Tug Valley Recovery Center, Inc. v. Mingo County Commission, decision declined, in view of the full taxation mandates of West Virginia Code § 11-3-1 and § 18-9A-1, to reduce the petitioner's assessment and instead directed an increase in the assessment of the taxpayers who were undervalued, this Court is of the opinion that a reduction of the petitioner's assessment, in this instance, is proper for several reasons.

First, as our Court noted in the Killen decision, at page 703, "[t]he United States Supreme Court . . . [i]n Sioux City Bridge Co. v. Dakota County, 260 U.S. 441, 43 S.Ct. 190, 67 L.Ed. 340 (1923) . . . ruled that where uniformity of taxation and full value assessment could not be reconciled, uniformity took precedence."

In the present matter, though this Court is of the opinion that authority exists to order the assessor to equalize assessments by increasing the assessment of comparable properties to the level at which petitioners' property is assessed, the undersigned is further of the opinion that the consideration declared in an arms length transfer of real estate, though relevant as to value, should not

necessarily serve as the basis for the assessment of all similar real estate.

Though petitioners' deeds reflect declared considerations of 24,624,000.00 and 29,842,500.00 in 1974 and 1982, and though the real estate may in fact have been worth the consideration declared, the differing abilities of various real estate owners to bear the burden of real estate taxes based upon prices paid by the wealthy leads the undersigned to conclude that the consideration declared in petitioners' deeds should not, in this case, serve as the basis for the assessment of all substantially similar real estate in Webster County.

The impact of high real estate taxes will obviously be greater upon one of modest income than it will on an individual or corporation possessed of wealth sufficient to purchase real estate at a premium price and in a position to take advantage of various tax write offs available under present tax laws.

The consequence of a high real estate assessment, and tax, will materially vary depending on whether the taxpayer is one of limited or fixed income or is a public utility company, entitled to write off, and to pass on to consumers, the cost of real estate taxes levied. Should uniformity of taxation be attempted through an increase of the assessment of Webster County real estate to the level of that of the petitioners, an assessment in excess of $2,000.00 per acre, it seems probable that individual ownership of real estate of the nature owned by the petitioners would shortly disappear except for those of great wealth.

Second, from a reading of W.Va. Code § 11-3-25, relating to relief in the Circuit Court against an erroneous assessment, it appears that a Circuit Court, in hearing an appeal as contemplated in § 11-3-25, is empowered to fix the true and actual value of property erroneously assessed and to order the refund of excess taxes paid, the

probable basis for the public clamor in this matter, if the property was valued too high, and if valued too low, to correct the valuation and fix its true and actual value.

From the foregoing, it is obvious that a Circuit Court is vested with authority to increase or decrease values in the process of correcting erroneous assessments, as an assessor and a Board of Equalization and Review is vested with authority to increase or decrease assessments to secure equal and uniform property taxation.

Therefore, though our Court appeared to discourage a reduction in valuation to secure equal and uniform taxation, in the Tug Valley Recovery case, *supra*, page 172, it is evident from the provisions of W.Va. Code § 11-3-25, and the utilization of this approach by our Court in a series of its decisions: In Re United States Steel Corp., W.Va. 268 S.E.2d 128 (1980); In Re Tax Assessment Against Pocahontas Land Corp., W.Va. 210 S.E.2d 641 (1976); In Re Assessment of Kanawha Valley Bank, 144 W.Va. 346, 109 S.E.2d 649 (1959), that where a reduction in the value of property erroneously assessed is necessary to insure uniformity Circuit Courts are empowered to reduce the values of properties erroneously assessed.

Finally, our Court has emphasized the need to assure uniform property assessment by, among other things, the implementation of appropriate provisions of W.Va. Code § 18-9A-11. At page 705 of Killen v. Logan County Commission case *supra* our Court, in emphasizing the need to make use of the Tax Commissioner's appraisals, stated that "W.Va. Code § 18-9A-11 provides that the county officials *shall use such appraised valuations as a basis for determining the true and actual value for assessment purposes. . . .* This Court adheres to the view that *'the use of the word shall without any modification unquestionably makes the direction mandatory.'* "

As has been previously noted, W.Va. Code § 11-3-25 provides that in instances of erroneous assessment the

Circuit Court is to "correct the assessment, and fix the property at its true and actual value". In performing this function, our Court, in Tug Valley Recovery Center, Inc. v. Mingo County Commission, 261 S.E.2d 165, at 173, and in Killen v. Logan County Commission, W.Va., 295 S.E.2d 689, at 705, stated that "[*i*]*t is incumbent upon the circuit court, as it would be upon the county commission and the assessor, to set the assessed value of all parcels of land at the amount established by the State Tax Commissioner.*"

Consistent with our Courts' directive and in consideration of the evidence adduced, including Exhibit I, the Tax Commissioner's Guide of Assessors Valuation of Coal Appraisals, indicating an appraised value for Webster County coal of $360.00 per acre, during the period involved, a reduction in valuation is required.

It is therefore, pursuant to the provisions of W.Va. Code § 11-3-25, the judgment and order of this Court and this Court finds and fixes the true and actual value of petitioners' parcels 4Q-16, 4P-1, 4Q-15, 3Q-5, 3Q-9, 3P-15, a 100 acre parcel of Coal and a 100 acre mineral parcel, both situate on Beaver Creek, be at $360.00 per acre.

It is the further JUDGMENT and ORDER of the Court that the assessment of parcels 4R-67, 4Q-6, 4Q-7, 4Q-71-1 and 45-91 for a period in question be and the same is hereby affirmed, it being the finding of this Court that from, the small size of said parcels, the imposition of comparable assessments to comparable properties of others and a lack of evidence establishing that the assessments were not uniform as to these parcels, that petitioners have not shown these assessments to be erroneous.

It is the further JUDGMENT and ORDER of this Court and this Court finds and fixes the true and actual value of petitioners' parcels 4Q-15, 3P-14, 3P-12, 3P-11 and 3P-13 at $300.00 per acre.

It is the further JUDGMENT and ORDER of this Court that the assessor recompute petitioners assessed valuations in a manner consistent with true and actual values herein before found and fixed by this Court, at sixty percent thereof, and that the assessor forthwith issue new tax tickets to petitioners applying the correct levy rate to the corrected valuations and assessments.

Inasmuch as the petitioners have not paid tax for the years 1983, and 1984 it is the further JUDGMENT and ORDER of this Court that said petitioners should be and they are hereby released from the payment of taxes assessed and levied upon the valuations and assessments hereinbefore found to have been erroneous.

It is the further JUDGMENT and ORDER of this Court that the Assessor of Webster County, Dana Lynch, consistent with his duty to comply with Section 1, Article X of the West Virginia Constitution requiring equal and uniform taxation, immediately contact the office of the State Tax Commissioner of West Virginia and schedule a meeting with said Tax Commissioner, or such deputy or representative as said Tax Commissioner shall designate, for the purpose of evaluating and reviewing current real estate assessments in Webster County, West Virginia; determining whether said assessments are being made in violation of the equal and uniform provisions of Article X, Section 1; whether said assessments are generally equal and uniform throughout the county, and if not a description of actions needful and necessary to secure equal and uniform taxation; whether the assessor is effectively utilizing the technology, materials and assistance available through said Commissioner's office, and that said assessor do appear before the undersigned, at the Webster County Courthouse, Webster Springs, West Virginia, in the Courtroom therein, at one o'clock p.m., on January 17, 1986, and then and there report to this Court in writing and verbally the result of the evaluations, review and determinations herein ordered.

ENTERED THIS THE 22ND DAY OF NOVEMBER, 1985.

/s/ Danny O. Cline
DANNY O. CLINE
Judge

APPENDIX E

IN THE CIRCUIT COURT OF WEBSTER COUNTY
WEST VIRGINIA

Civil Action No. 81-C-42

IN RE: SHAMROCK COAL COMPANY, INC., a corporation

Civil Action No. 82-M-18

IN RE: ONEIDA COAL COMPANY, INC., a corporation

Civil Action No. 83-MSC-10

IN RE: ONEIDA COAL COMPANY, INC., a corporation

Civil Action No. 84-MSC-10

IN RE: ONEIDA COAL COMPANY, INC., a corporation

Civil Action No. 85-MSC-19

IN RE: ONEIDA COAL COMPANY, INC., a corporation

[Filed Feb. 13, 1986]

ORDER

On the 31st day of January, 1986, the above-styled actions having been consolidated by orders heretofore entered herein, came on to be heard, the Petitioners (Shamrock Coal Company, Inc., a corporation, and Oneida Coal Company, Inc., a corporation) appearing by W. T. Weber, Jr., their attorney of record, and the Respondent, the Webster County Commission, appearing by Jack Alsop, Prosecuting Attorney for Webster County, West Virginia, upon the petitions for review and equalization of assessment of properties of Petitioners in Webster County, West Virginia, filed with the Webster County Commission in

1981, 1982, 1983, 1984 and 1985, the original records in each of the proceedings before the Webster County Commission, including transcripts of the testimony taken and certified as required by law, all Exhibits filed in each of said proceedings, all orders of the Webster County Commission denying Petitioners relief and memoranda of the parties heretofore filed, all constituting and being the complete and full record of all proceedings before the Webster County Commission; Petitioners' petitions for appeal and relief from assessment heretofore filed in this Court, orders granting the appeals and consolidation of these actions, and argument of counsel.

Petitioners have been at all times relevant herein the owners of three thousand seven hundred (3,700) acres of coal in Glade District and four thousand eighty three (4,083) acres of coal in Holly District, Webster County, West Virginia, in the aggregate seven thousand seven hundred eighty three (7,783) acres.

Although the real estate (coal property) of Petitioners is not identical to that of all other real estate (coal property) in Webster County, it appears that Petitioners' real estate is substantially similar to the real estate of the others in topography, location, access, development and mineral content and that the Petitioners' real estate is substantially similar to adjacent and contiguous tracts and parcels of real estate owned by others.

The Petitioners, individually and collectively, contend that their real estate (coal property) has been systematically valued, assessed and taxed in violation of the "equal and uniform" requirement of Article X, Section 1 of the Constitution of West Virginia. They further maintain that, though the real estate owned by them is substantially the same as adjacent and contiguous real estate (coal property) owned by others, the Assessor and the Webster County Commission sitting as a Board of Equalization and Review, by sustaining the assessment of Petitioners' real estate (coal property), have systematically

valued, assessed and taxed Petitioners' real estate (coal property) at a rate well in excess of the rate applied to adjacent and contiguous owners.

The Petitioners assert that the rate of their respective valuations and assessments not only exceeds the rate of assessment applied to the real estate (coal property) of adjoining and contiguous owners, but is also valued at more than double the per acre value established by the 1975 appraisement of the State Tax Commissioner of West Virginia for substantially similar Webster County coal property. They further maintain that while their coal property is valued, and consequently assessed and taxed, at a per acre rate approximately twice that of the Tax Commissioner's 1975 appraisement for similar Webster County coal property, substantially similar parcels of adjacent and contiguous coal property owned by others is valued, assessed and taxed at a per acre rate considerably less than that applied to the Petitioners and in fact less than the per acre rate for similar Webster County coal property by application of the Tax Commissioner's 1969 guide for the valuation and appraisal of coal properties.

Finally, the Petitioners assert that the Assessor, over a period of five years, has systematically valued, assessed and taxed Petitioners' coal property at an excessive rate while refusing to increase to a like rate the assessment of substantially similar coal property lying adjacent and contiguous to that of Petitioners, but owned by others, or to decrease to a like value Petitioners coal property.

The respondents contend that Petitioners' real estate is properly valued, assessed and taxed.

Upon consideration of the entire record adduced before the Webster County Commission sitting as a Board of Equalization and Review, including the transcribed testimony and Exhibits admitted in evidence, the Court finds as matters of fact:

FINDINGS OF FACT

(1) That Shamrock Coal Company, Inc., (Shamrock) and Oneida Coal Company, Inc., (Oneida) Petitioners, are each wholly owned subsidiaries of Elk River Resources, Inc., a corporation, and that the interest herein of Petitioners is identical, except that the legal title to the property, the subject of these consolidated actions, was vested in Shamrock at all times relevant to Civil Action No. 81-C-42, and at all other times the legal title was vested in Oneida.

(2) Petitioners at all times relevant herein, are the owners of three thousand seven hundred (3,700) acres of coal in Glade District and four thousand eighty three (4,083) acres of coal in Holly District, Webster County, West Virginia, in the aggregate seven thousand seven hundred eighty three (7,783) acres of coal. The real estate or real property of Petitioners' is hereinafter referred to as "coal property".

(3) The coal property is the same conveyed to Oneida by Shamrock, by deed dated May 12, 1981, of record in the office of the Clerk of the County Commission of Webster County, West Virginia, in Deed Book No. 191, at page 265, and the same heretofore conveyed to Shamrock by Preston W. Carroll, and wife, by deed dated December 21, 1977, of record in said Clerk's office in Deed Book No. 180, at page 387. Oneida is the successor corporation in title to Shamrock. The conveyance of the coal property to Oneida by Shamrock was a transfer between subsidiary corporations of Elk River Resources, Inc., and without actual paid cash consideration.

(4) Shamrock acquired the coal property, together with other properties situate in Braxton and Nicholas Counties, West Virginia, by the deed aforesaid to it from Preston W. Carroll, and wife, and paid therefor the sum of Ten Million Dollars ($10,000,000.00) for all of the property in Webster, Nicholas and Braxton Counties.

The deed conveyed to Shamrock 1,500 acres, more or less, sometimes referred to as 1,646 acres or 2,300 acres, of coal property in Nicholas County, West Virginia, 7,783 acres of coal property in Webster County, West Virginia, and 3,955 acres of coal property in Braxton County, West Virginia, an aggregate of 13,238 acres or 14,038 acres. The deed declares that the total consideration paid for the property conveyed as aforesaid to Shamrock is Ten Million Dollars ($10,000,000.00). In addition to the property conveyed by the deed aforesaid to Shamrock for the consideration noted above, Preston W. Carroll and wife, assigned to Shamrock a coal lease made by H. Rembrant Woolridge, and others, to Preston W. Carroll for 183.5 acres of coal, including 146.5 acres of surface over lying part of the 183.5 acres of coal, a lease from H. R. Deitz, and others, to Preston W. Carroll, for 100 acres of coal in Webster County, West Virginia, and an option by and between Cathryn Randolph and Byron B. Randolph, her husband, to Preston W. Carroll, to lease 1,693.28 acres of coal in Webster County, West Virginia.

(5) The Assessor of Webster County appraised Petitioners' coal property by taking a percentage of the declared consideration of Ten Million Dollars ($10,000,000.00) equal to the total number of acres included in the conveyance aforesaid from Preston W. Carroll in Webster County, West Virginia, to the total number of acres contained in the conveyance in Webster, Braxton and Nicholas Counties, West Virginia, without consideration of the value of the leases and options assigned.

(6) The Assessor of Webster County, West Virginia, has appraised Petitioners' coal property at Five Million Eight Hundred Sixty Seven Thousand Six Dollars ($5,867,600.00).

(7) The Assessor has assessed Petitioners' coal property upon the appraised value established by the Assessor

as aforesaid by assessing Petitioners' coal property at 50% of the appraised value, an assessed value of Two Million Nine Hundred Thirty Three Thousand Eight Hundred Dollars ($2,933,800.00).

(8) The appraised value of Petitioners' coal property in Webster County, West Virginia, is $753.90 per acre.

(9) The assessed value of Petitioners' coal property in Webster County, West Virginia, is $376.95 per acre.

(10) The Tax Commissioner of West Virginia has appraised coal property in Webster County, West Virginia, at $360.00 per acre.

(11) The assessed value of Petitioners' coal property in Webster County, West Virginia at $376.95 per acre is $160.95 per acre more than 60% of the appraised value of $360.00 per acre established by the Tax Commissioner ($360.00 x .60 = $216.00; $376.95 — $216.00 = $160.95) and $196.95 per acre more than 50% of the appraised value of $360.00 per acre established by the Tax Commissioner ($360.00 x .50 = $180.00; $376.95 — $180.00 = $196.95).

(12) The Assessor has not had Petitioners' coal property appraised.

(13) The Assessor has no qualifications or expertise to appraise coal properties.

(14) The Assessor has not inspected or viewed Petitioners' coal property.

(15) The Assessor has ignored the value placed upon Petitioners' coal property by the Tax Commissioner of West Virginia.

(16) The Assessor has ignored geological information, engineering information and a bona fide appraisal presented to her and to the County Commissioner of Webster County in the years 1981, 1982, 1983, 1984 and 1985 in appraising and assessing Petitioners' coal property.

(17) That the Land Books for the year 1983 for Holly, Hacker Valley, Glade and Fork Lick Districts of Webster County, being all of the Magisterial Districts in Webster County except for those districts including only municipal corporations, there were 1,092 tracts assessed as coal tracts only; that there were 101 coal tracts, or 9% of the coal tracts, assessed in excess of $180.00 per acre, and 991 or 91% of the coal tracts assessed at less than $179.00 per acre.

(18) For the year 1983 84% of all coal tracts in Webster County were assessed at or below $50.00 per acre.

(19) For the year 1983 the average assessed value in Holly District of coal only tracts is $107.00 per acre.

(20) That the Land Books for the year 1984 for Holly, Hacker Valley, Glade and Fork Lick Districts of Webster County, being all of the Magisterial Districts in Webster County except for those districts including only municipal corporations, there were 1,141 tracts assessed as coal tracts only; that there were 109 coal tracts, or 10% of the coal tracts, assessed in excess of $180.00 per acre, and 1031 or 90% of the coal tracts assessed at less than $179.00 per acre.

(21) That for the year 1984 82% of all coal tracts in Webster County were assessed at or below $80.00 per acre.

(22) That the Land Books for the year 1985 for Holly, Hacker Valley, Glade and Fork Lick Districts of Webster County, being all of the Magisterial Districts in Webster County except for those districts including only municipal corporations, there were 1,155 tracts assessed as coal tracts only; that there were 114 coal tracts, or 10% of the coal tracts, assessed in excess of $180.00 per acre, and 1041 or 90% of the coal tracts assessed at less than $179.00 per acre.

(23) That for the year 1985 86% of all coal tracts in Webster County are assessed at or below $80.00 per acre.

(24) The Webster County Land Books show *changes* in assessed values, assigned by the Assessor, for coal only tracts from 1983 to 1984 as follows:

Assessed Value	Number of Tracts	Percent
10% increase	55	5%
9%-11% increase	299	27%
Less than 9% increase	203	18%
11%-20% increase	72	6%
More than 20% increase	87	8%
Entries unchanged	392	35%
Entries reduced	7	1%

One third (1/3) of coal only entries fall beyond 10% increase, plus or minus one, from 1983 to 1984; 392 entries or 35% of all tracts were not changed; 354 or 32% of all entries were increased between 9% and 11%; and 362 entries or 33% increased less than 9% or more than 11%.

One hundred eighty four (184) entries were increased a flat $10.00 per entry from 1983 to 1984.

(25) The Assessor has systematically and intentionally undervalued similar coal properties in Webster County and the systematic and intentional undervaluation has been ratified and confirmed by the Webster County Commission sitting as a Board of Equalization and Review.

(26) Petitioners' coal property containing in the aggregate 7,783 acres contains only 2,510 acres of mineable coal.

(27) Steven A. Holmes, a qualified coal appraiser, has appraised Petitioners' coal property and assigned a total value of Nine Hundred Twenty Six Thousand, One Hundred Seventy Seven Dollars ($926,177.00).

(28) Petitioners' have presented the testimony of a geologist, engineers, a qualified appraiser, the coal appraisal summary of the Tax Commissioner and an analysis of the assessed valuation of coal properties in Webster County, West Virginia, all of which have been ignored by

the Assessor and the Webster County Commission. The Assessor and Webster County Commission have presented no evidence in support of the appraised and assessed values assigned to Petitioners' coal properties for purposes of *ad valorem* taxation.

(29) The Webster County Commission by denying Petitioners the relief prayed for has adopted, ratified and confirmed the actions, conclusions, appraisal and assessments of the Assessor.

(30) Petitioners timely applied to the County Commission of Webster County, West Virginia, sitting as a Board of Equalization and Review, (Commission) in the years 1981, 1982, 1983, 1984 and 1985 to adjust and equalize the assessment of Petitioners' coal lands in Webster County, West Virginia.

(31) The Commission refused to grant the relief sought by Petitioners and to equalize and adjust the assessment of Petitioners' coal lands for the purposes of *ad valorem* taxation in Webster County, West Virginia, by its orders timely entered in 1981, 1982, 1983, 1984 and 1985.

(32) Petitioners timely filed for appeal in this Court pursuant to *West Virginia Code* § 11-3-25 in 1981, 1982, 1983, 1984 and 1985 and the appeals were granted in each of said years.

(33) The transcripts of testimony, adduced in the various hearings before the Board of Equalization and Review, reveal that, though the Assessor was aware that Petitioners' real estate was being assessed at a rate substantially greater than the assessment applied to similar real estate owned by others, it was the Assessor's contention that the real estate of the Petitioners was properly assessed at fifty per cent (now sixty) of the value set forth in the declaration of consideration appearing in Petitioners' deed from Preston Carroll, and others, adjusted to the number of acres in Webster County.

(34) The Assessor maintained that all recently transferred property was uniformly and equally assessed at fifty per cent (now sixty) of the value declared in the most recent deed of conveyance to a taxpayer. According to the Assessor, the declared consideration set forth in a deed conveying real estate in an arms length transaction between a willing buyer and a willing seller was the most accurate reflection of the market value of the real estate conveyed.

(35) The Assessor, though recognizing the fact that some real estate (coal property) in Webster County, including that of the Petitioners', was being assessed at a higher rate as a consequence of the consideration declared in the taxpayer's deed, asserted that the assessment of property which had not been recently transferred, and therefore had a low, or no, declared value, had nevertheless been increased in assessment periodically, inferentially suggesting that over a period of time equalization would be accomplished through periodic increases in the assessment of property which had not recently changed hands. In support of this position, increases in the assessment of Webster County real estate, between the years of 1983 and 1984, were noted.

(36) As examination of the increase in assessments between 1983 and 1984 does not support the inference.

(37) Though the Assessor appeared to imply that increased assessments of the properties assessed low would eventually result in equalization, it is worthy of note that should the increased assessment applied be applied in like amount in the future an incredible period of years would be required for equalization with Petitioners' present assessment, and should increased assessments be uniformly applied to Petitioners' as well as other property in the future, equalization would, of course, never be accomplished. In fact, the difference between the assessments would become greater, not less.

(38) From the evidence it appears that in making the contested assessments the Assessor did not compare the various features of the property to which the high assessment was applied with the various features of property assessed at a much lower rate.

(39) The Assessor did not procure, examine or consider reports of engineers, geologists, coal appraisers or other persons possessing expertise in any particular field relating to real estate values in assessing Petitioners' coal property.

(40) The questioned assessments were not based upon the presence of economically mineable or removable coal as compared to an absence of the same.

(41) The questioned assessments were not based upon present use or immediately foreseeable economic development of Petitioners' coal property. The Assessor did not consider the size, shape, location, access, or availability of public highways or electricity in assessing the Petitioners' coal property.

(42) The sole basis for the assessment of Petitioners' real estate was, according to the Assessor, the consideration declared in Petitioners' deed.

(43) Upon examination, the Assessor did not contend that Petitioners' assessment was the result of unique or valuable features peculiar only to Petitioners' land. The Assessor admitted on examination that she did not, in making her appraisement, physically inspect or view the Petitioners' real estate, that she had not compared it to adjacent or contiguous tracts, that no scientific examinations or tests had been made or performed by her or at her request or direction and that appraisements had not been sought or considered, including appraisements prepared by the State Tax Commissioner of West Virginia for use by Assessors, in the performance of the duties of that office, and that she had no training or expertise in valuing property, including coal property.

(44) The Assessor admitted on examination that, though she was aware of and had access to the Tax Commissioner's guide for Assessors, in the valuation of coal appraisals and coal deposits, she had not used or attempted to use or apply these materials in the contested assessments.

(45) The record does not disclose that the Assessor ever, in making assessments at issue before this Court, made use of any materials, guides, services or assistance available through the State Tax Commissioner's office.

(46) The Assessor and Commissioner utilized solely the declared consideration in Petitioners' deed as the triggering mechanism for assessing Petitioners' coal property.

(47) The evidence adduced before the Board of Equalization and Review for the assessment years in question, 1981 through 1985, reflects a substantial variance in the per acre assessment of petitioners' coal property and the coal property of most other owners.

(48) Petitioners' Exhibit No. 13, a compilation of the 1983 coal property assessments, derived from the Webster County Land Books, for the magisterial districts of Holly, Hacker Valley, Glade and Fork Lick, reveals that while petitioners' 4,083 acre coal tract in Holly District was assessed at $376.95 per acre, the Cathryn Randolph coal property, comprised of several parcels making up a tract of 1,605.38 acres, also situate in Holly District, was assessed at an average of $21.99 per acre. An 8,482.48 acre tract of coal comprised of fifty parcels, and apparently owned jointly by Juliana Mining Co. and Wolfpen Knobb Dev., was assessed at $48.55 per acre. The 1,018.62 acre tract apparently jointly owned by Hassel Blankenship, Harold Deitz, John McCutcheon and Woodrow Trent was assessed at an average of 19.21 per acre. A 1,365.6 acre tract titled to Hubert Echols, Trustee, was assessed at $22.00 per acre, as was a 100 acre tract

assessed to the Sun Lumber Co., and the 1/12 interest of Hazel Matheny in a tract of 8,132.81 acres.

(49) Though the preceding comparison does not reflect, exactly, the pronounced difference in the assessment of all coal tracts in Holly District, these assessments are generally indicative of the assessment of Webster County coal tracts during the period in question.

(50) The consequence to the revenues of Webster County of the differing assessments becomes evidence if the $376.95 per acre assessment of which the petitioners complain is applied to the coal tracts previously compared.

(51) The assessment of the Cathryn Randolph coal would have been $605,147.99, rather than $35,310.00, a difference in assessment of $569,837.99 per year, had the assessment been $376.95 per acre. The yearly difference in assessment for Juliana-Wolfpen would have been $2,785.646.40, Blankenship, Deitz, McCutcheon and Trent, $364,401.11 and Echols $484,682.00. The total difference in yearly assessment as to these coal interests would have been $4,204,567.40.

(52) Exhibit No. 13 further discloses that whereas petitioners' 3,700 acre coal tract in Glade District was assessed in 1983 at $376.95 per acre, the 2,693 acre coal tract assessed in the name of Mary Coletraine bore a $24.20 per acre assessment. In comparison to the petitioners' assessment, the assessment of a 9,631 acre total tract in Glade District, assessed in the names of Jake Fisher, Robert Bierer, John H. and Ann McCutcheon and W. L. Thomas, was $21.98 per acre. A 1,301 acre coal tract assessed to Bertha Todd was assessed at $22.00 per acre.

(53) The difference in the total assessment of the compared Glade District coal properties and the total assessment of these properties applying the protested per acre assessment is again revealing.

Applying the protested assessment, the Coletraine assessment results in an increase of $949,945.70 from $65,180.60 to $1,015,126.30. The Fisher assessment increases from $211,689.38 to $3,630,405.40, an increase of $3,418,716.10, per year. An application of the 376.95 per acre assessment to the Todd coal property results in a yearly assessment of $490,411.95, an increase of $461,791.95 over the 1983 assessment of $28,622.00.

(54) An examination of the Hacker Valley District coal properties listed in Exhibit No. 13 reveals that Meadowlark Farms was assessed in 1983 as the owner of 13,922.13 acres of coal. The per acre assessment of the Meadowlark coal was $85.58 per acre, a total yearly assessment of $1,197,446.40. By application of petitioners' per acre assessment Meadowlark's assessment becomes $5,274,333.40, an increase of $4,076,887.00.

(55) The Sun Lumber coal properties in Fork Lick District, 12 parcels comprising a 1,178.75 acre total, were assessed in 1983 at $23.81 per acre, an annual assessment of $28,066.03. Application of petitioner's rate of assessment results in a total assessment of $444,329.81, an increase of $416,263.78.

(56) The Pardee Curtin Lumber Company is assessed as the owner of 10,962.89 acres of coal in Fork Lick District. The total assessed value of this coal acreage in 1983, comprised of 108 tracts, was $317,110.00, a per acre assessment of 28.92. The total assessment would have been $4,132,461.30, an increase of 3,815,351.30, had these coal properties been assessed at 376.95 per acre.

(57) From Exhibit No. 13 it appears that, though the coal acreage of some Webster County taxpayers is assessed at more than $100.00 per acre, most of the coal only tracts are assessed at less than $50.00 per acre.

(58) An examination of petitioners' Exhibit No. 5 admitted as evidence during the February 1985, hearing before the Board of Equalization and Review, reflects

that although minor increases in the 1984 per acre assessment of coal tracts of Webster County were made, the pattern of assessments remained essentially the same.

(59) As was the case in the assessments of the real estate of Allegheny Pittsburgh Coal Company and East Kentucky Energy Corporation, the petitioners, Shamrock Coal Company, Inc., and Oneida Coal Company, Inc., have been systematically subjected to assessments that were neither equal nor uniform within the meaning of *West Virginia Constitution*, Article X, § 1, and the equal protection of the Fourteenth Amendment of the *United States Constitution.*

(60) Although it is abundantly clear from the evidence that the assessor and Board of Equalization and Review could have generated substantial tax revenues by equalizing assessments, neither has chosen to do so, relying instead upon a few selected taxpayers to bear a disproportionate share of the tax burden.

DISCUSSION

Article X, Section 1, of the *West Virginia Constitution*, titled *Taxation and Finance* provides, in part, that ". . . taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value, to be ascertained as directed by law."

Article X, Section 1, further provides, in part, that "[n]o one species of property from which a tax may be collected shall be taxed higher than any other species of property of equal value . . .".

The West Virginia Supreme Court of Appeals in a case styled, *Killen v. Logan County Com'n.*, W.Va., 295 S.E.2d 689, at Page 693, characterized Article X as being ". . . both a grant of power to the Legislature to tax . . ." by virtue of the provisions of *West Virginia Constitution*

Article 10, §§ 1, 5, and 9, ". . . and a limitation upon that power."

The limitation according to the Court lies in the requirement that the taxation contemplated be "equal and uniform" and in the concept and provision that taxation should be equal on properties of equal value.

Article X, Section 1, according to our Court contemplates the establishment of a system of property taxation in which property, "both real and personal" is subjected to "equal and uniform" taxation, as "directed by law".

The matter of "equal and uniform" property taxation has been addressed by the Legislature through the enactment of various statutes for the implementation of the process of taxation. The process contemplates a statewide system of taxation in which the tax is to be equally and uniformly applied in proportion to the value of the property taxed.

The Supreme Court in *Killen v. Logan County Com'n.*, *supra*, described the process of taxation as consisting of the elements of valuation and levying. Valuation is described as the act of assigning a value to each property to be taxed. Once the value is assigned to a particular property a tax, at a designated rate, is levied, or charged, against the property.

The responsibility of valuation, assigning or placing the value at which property is to be taxed, is that of the County Assessor. This aspect of the process of taxation is known as assessment and is the aspect of the process of taxation at issue before this Court.

Once the County Assessor establishes a value for a property, assesses it, for taxation, various levying bodies, including the State, the County Commissions, local school boards and municipalities determine the rate, or amount, of tax to be levied or collected for each one hundred dollars value assessed. This aspect of the taxation process, known as levying, is not at issue before this Court.

W.Va. Code, § 11-3-1, provides that "[a]ll property shall be assessed (by the assessor) annually as of the first day of July at its true and actual value; that is to say, at the price for which such property would sell if voluntarily offered for sale as such property, the value of which is sought to be ascertained, is usually sold, and not the price which might be realized if such property were sold at a forced sale . . .".

Though our Supreme Court in *Kemp v. Boyd*, W.Va., 275 S.E.2d at 303, recognized that the primary responsibility for the execution of the duty of assessing county property for taxes, ". . . a task requiring foresight, cooperation and detailed labor . . .", rests upon the County Assessors and Commissioners, the Court, in *Tug Valley Recovery Center, Inc., v. Mingo Cty. Comm., W.Va.*, 261 S.E.2d 165, at page 173, in noting the technical and complex nature of the assessment of real estate values, particularly mineral estates, concluded that the task of assessment was ". . . lightened to a great extent by the provisions of *W.Va. Code* § 18-9A-11 . . ." which ". . . provides that the State Tax Commissioner is to make an appraisal of all mineral and surface estates in West Virginia, and that appraisal is to serve as the basis for determining true and actual value for all assessment purposes."

The Court in stating that ". . . once the Tax Commissioner's appraisal has been made . . . it is incumbent upon the Circuit Court, (upon an appeal) as it would be upon the County Commission and the Assessor, to set the assessed value of all parcels of land at the amount established by the State Tax Commissioner.", appears to have attached a substantial significance to the Tax Commissioner's appraisal.

It would seem that the former Assessor, who during her testimony acknowledged receipt of the Tax Commissioner's appraisal of Webster County coal properties, obviously did not attach the same significance, in view of

the fact that after receipt of the appraisal it was placed in a drawer where it remained unused and abandoned until the day of the hearing. The present occupant of the office seems to have adopted substantially the same position as that of his predecessor.

The responsibility of the Tax Commissioner to provide executive oversight for the Assessor, by furnishing property appraisals and correcting incorrect assessment as provided in *W.Va. Code* § 18-9A-11, was emphasized in *Killen v. Logan County Com'm., supra,* at page 694, and again in a case styled *In Re: Tax Assess. Against Pocahontas Land Co.*, 303 S.E.2d 691 (W.Va. 1983), at page 699. Our Court in *Killen*, at page 694, stated that "[t]he State Tax Commissioner has the duty of supervising all of the valuation process. *W.Va. Code*, § 11-1-2; *W.Va. Code* § 18-9A-11."

Though the interrelation between the duties of an Assessor and those of the Tax Commissioner is apparent from an examination of appropriate statutory provisions and cases decided by our Court with reference thereto, the functions of the two offices in the valuation process are different.

In the process of valuation one of the duties of the Tax Commissioner is that of *appraisal*, while that of the Assessor is that of *assessment*. In footnote 5, at pages 694 and 695, our Court, in the *Killen* case, supra, defined an appraisal as generally meaning ". . . the estimate of value given a particular item or piece of property." An assessment was described as meaning ". . . the listing and valuation of property for taxation purposes." Both appraisals and ". . . assessments are to be based on true and actual value. *W.Va. Code* § 11-3-1."

Although the undersigned found no statute or case specifically so stating, it seems, from the statutes and cases examined, that the process of appraisal and assess-

ment contemplated by the Legislature is one in which the State Tax Commissioner has been vested with a general responsibility for the establishment of property values, statewide. The statutes and cases also suggest that the Assessor's duty is that of affirmatively examining and assessing each piece of property, equally and uniformly, within his county. If the process works it would seem that property appraisals and assessments, within county borders and statewide would be uniform.

Logic indicates that although the Tax Commissioner may be aware, in general, of the value of machinery, equipment, motor vehicles, boats, dwellings, buildings, land and other property, both from county to county and statewide, it does not follow the Commissioner, with or without the help of his deputies, would be aware of the condition of all the machinery, equipment, motor vehicles, boats, dwellings, buildings and land, any more than he would be aware of the specific characteristics of a particular parcel of land in Webster County.

Though the Tax Commissioner might have general knowledge of the value of Webster County land, without the benefit of examination the Commissioner would not be aware of whether any given tract was level or precipitous, timbered, farmed or waste land, mined or unmined, accessible or inaccessible or any number of things that could add to, or detract from, the value of the land.

It seems that in vesting the Assessor's Office with the power to assess the Legislature contemplated an assessment process in which the Assessor and his deputies, they being county residents, would go into the county and view the machinery, equipment, motor vehicles, boats, dwellings, buildings, land and other property to be assessed and make a reasoned and rational determination as to value for purposes of assessment. Our Court in *Tug Valley Recovery Center, Inc. v. Mingo Cty. Comm.* W.Va.., 261 S.E.2d 165, at page 173, described "[t]he assessment of real estate value . . ." as ". . . a very

technical and complex area . . . ." and in *Kemp v. Boyd*, supra, described ". . . the mission of assessing county property for taxes as a task requiring foresight, cooperation and detailed labor."

In a case styled *Michael Kline, et al. v. Jim McCloud, et al., etc.*, 326 S.E.2d 715 (W.Va. 1984), at page 718 of the decision, our Court stated that "[i]n determining the fair market value of a piece of land, a county assessor must 'seek out all information which would enable him to properly fulfill his legal obligation.' *In Re Shonk Land Co.*, 157 W.Va. 757, 761, 204 S.E.2d 68, 70 (1974)." In the case at bar it appears from the evidence that the assessment was based solely on the consideration declared in Petitioners' deeds. The Assessor gave no weight or consideration to the appraisals of the Tax Commissioner, engineering reports, geologist's report and a coal appraisal report presented on behalf of Petitioners, or the appraisals submitted. Instead of seeking out information the Assessor seems to have totally refused to consider evidence submitted on behalf of the Petitioners.

However, though recognizing the supervisory authority of the Tax Commissioner in the process of property taxation, our Court appears to hold that an Assessor, in performing the function of property assessment, is not obliged to simply parrot the appraisals of the Commissioner.

The first step in taxing real property is a determination of "true and actual" value. *Kline v. McCloud*, supra, at page 718. In the *Kline* case the Court reaffirmed that true and actual value meant fair market value, the selling price on the open market. Quoting *In Re Shonk Land Co.*, 157 W.Va. 757, at 761, 204 S.E.2d 68, at 70, our Court in *Kline*, at page 718, stated that: "although the assessor is under the supervision of the state tax commissioner he is not restricted in the search for informa-

tion leading to the true and actual value of properties to questions formulated by that state official."

The Court thereafter again affirmed its holding in *Killen* that County Assessors were entitled to consult other credible and reliable sources, including the owner's sworn valuation and bona fide appraisals, as a part of the process of assessment, and were not limited to merely following the appraisals of the State Tax Commissioner.

Finally, the Court, citing *Crouch v. County Court of Wyoming County*, 116 W.Va. 476, 477, 181 S.E. 819 (1935), ". . . recognized that the price paid for real estate . . ." is ". . . a substantial indicia of its true and actual value, so long as the property changed hands in an arm's length transaction. . ." and that although the purchase price paid was not conclusive on the issue of value it is a factor to be considered in an arms length transaction.

From the foregoing it is evident that the Assessor of Webster County had several courses of action available in the matter of the questioned assessments.

The Assessor had the option of basing the assessment, as has been proposed by Petitioners, upon the Tax Commissioner's 1985 appraisals of Webster County coal property. The Assessor did not use or consider the appraisals available through the Tax Commissioner's Office.

In addition, the Assessor had the option of assessing the subject real estate at a rate consistent with the assessment of substantially similar adjacent and contiguous properties. This option was likewise rejected.

The Assessor initially and thereafter, could also have assessed the subject property based on a number of factors including the declared consideration, the Tax Commissioner's appraisals, the assessed value of substantially similar real estate, appraisals presented by or secured from private appraisers, the nature, use access and de-

velopment of the property together with other factors causing or tending to cause the subject property to be worth more, or less than comparable real estate. This option was likewise rejected by the Assessor.

Finally, the Assessor had the option, at that time, of assessing Petitioners' coal property at fifty percent of the consideration declared in the deed. At that juncture the assessment could have been properly made and sustained under the theory that in determining "true and actual" value, for purposes of assessment, the value declared in an arms length transaction substantially indicates the true and actual value of the property conveyed.

At that point, the Assessor would have been entitled to the benefit of the general presumption that the valuation was correct, *Bankers Pocahontas Coal Company v. County Court of McDowell County*, 135 W.Va. 174, 179, 62 S.E.2d 801, 804 (1950), thereby casting upon the taxpayer, the Petitioners, the burden of showing by clear and convincing evidence that the assessment was erroneous. *In Re: Tax Assessments Against the National Bank of West Virginia at Wheeling, et al.*, 137 W.Va. 673, 687, 73 S.E.2d 655, 664 (1952), *In Re Assessment of Kanawha Valley Bank*, 144 W.Va. 646, 109 S.E.2d 649 (1959), *In Re Tax Assess. Against Pocahontas Land Co.*, 303 S.E.2d 691, 699 (W.Va. 1983). Although the assessment when first made, as is shown by the evidence, exceeded the assessment of substantially similar property, the deviation, at that time could have been upheld as a sporadic deviation. However, if an Assessor undertakes to base current real estate assessments on the value declared in recent arms length real estate transactions, he must likewise raise the assessment of similar real estate to a like level, whether or not the similar real estate has been recently conveyed.

Though the initial assessment of Petitioners' coal property may have been presumptively correct, at that time, by failing to equalize assessments, that is, to either raise

the assessment of comparable properties to a level comparable to Petitioners' assessment, or to lower Petitioners' assessment to a level comparable with that at which substantially similar coal property was being assessed, the Assessor failed to achieve equality and uniformity in taxation, as required by Article X, Section 1.

Our Court, in *Killen v. Logan County Com'n.*, supra, at page 701, citing R. Blakey, *Report on Taxation in West Virginia* 107 (1930), noted that

> "The success of the general property tax depends upon the quality of the assessments. If assessments are very unequal the foundation of the entire tax structure is unsound. Inequality of assessments means that *those underassessed pay less than their fair share of public expenses* and *those overassessed pay their full share and, in addition, they have to make up for what the underassessed fail to pay.* The greater the inequalities of assessment the greater the inequalities of the tax and the more grievous the burdens upon those who find it most difficult to meet their obligations. (Emphasis supplied).

In a case decided in 1980, styled, *Matter of U.S. Steel Corp.*, W.Va., 268 S.E.2d 128, at page 132, our Court held that "[w]hile it is true that unintentional, sporadic deviations from an established system are not a sufficient basis for reversal of an assessment . . . [i]t would be totally unacceptable to allow counties to use two systems of assessment, one for favored taxpayers and one for other." Although the facts in the U.S. Steel case are not identical to those in the case at bar, the principle set forth therein is applicable here.

Though the issue confronting this Court, the Assessor, the County Commission and Board of Education of Webster County, has been portrayed in some newspapers as an issue involving the wrongful, and unjustified, refusal

of a foreign corporation to pay lawfully assessed and levied taxes, such is not the case.

The reluctance of the Assessor and a Board of Equalization and Review to increase the real estate assessments, and consequently the real estate taxes, of friends and neighbors to a level comparable to the assessment and levy returned against the Petitioners is understandable. So too is a refusal to lower the assessment of a foreign corporation, especially if to do so has been publicly represented as subjecting the county government and the school system to bankruptcy.

Despite the outcry, however, the evidence presented clearly and convincingly established that the Assessor, and the Board of Equalization and Review, in sustaining the questioned assessments, have, over a period of five years, systematically and intentionally assessed the Petitioners' real estate, and consequently levied taxes against Petitioners' real estate, at a weighted rate per acre of from 471.18% to 753.90% in excess of the weighted rate per acre assessment applied to comparable real estate owned by others and located adjacent, contiguous or near that of the Petitioners, and at a rate of 209.81% more than the Tax Commissioner's assessed value.

The evidence further shows, and the Court so finds, that the inequality of the assessment of Petitioners' real estate and that of comparable tracts has been repeatedly brought to the attention of the Assessor and the Board of Equalization and Review over the five year period involved.

The evidence also demonstrates, and the Court finds, that as Petitioners' have repeatedly and consistently protested the inequality of the assessment of their real estate, as compared to the assessments of comparable real estate owned by others, the Assessor and Board of Equalization and Review, have just as consistently and repeatedly refused to equalize Petitioners' assessment downward or to

equalize the real estate assessment of others upward, though Petitioners' have requested relief in both directions.

Additionally, the evidence discloses, and the Court finds, that the Assessor and Board of Equalization and Review have repeatedly refused to consider or give any weight or credence to the evidence tendered by Petitioners in their prayer for equal and uniform assessments.

Our Court in the *Pocahontas Land Co.* case, 303 S.E.2d 691, at page 699, (W.Va. 1983), held that ". . . where a taxpayer protests his assessment before a board, he bears the burden of demonstrating by clear and convincing evidence that his assessment is erroneous. Once this is done, *it is incumbent upon the taxing authority to place some evidence in the record to show why its assessment is correct.*" (Emphasis supplied).

In the matter before this Court, though the Petitioners have demonstrated by clear and convincing evidence that the assessment is erroneous, the taxing authority has not only failed to place evidence in the record to establish the correctness of the assessment, but has totally failed to consider the evidence tendered by the Petitioners.

It would seem from a reading of *Kline v. McCloud*, 326 S.E.2d 715, 719 (W.Va. 1984), that even though an Assessor may ". . . supplement the Tax Commissioner's appraisal report with information obtained from property owners or from recent deed values to determine the value of property without violating the equal and uniform provisions of our State Constitution . . .". If the taxpayer can demonstrate that the real estate of others has been systematically and intentionally undervalued, the taxpayer is entitled to relief under the equal protection clause of the Fourteenth Amendment to the *United States Constitution* and under the equal and uniform clause of Section 1, Article X of the *West Virginia Constitution*. *Kline v. McCloud*, supra, at page 724.

It is further held in *Kline*, at page 724, ". . . that the price paid for property in an arm's length transaction, while not conclusive, is relevant evidence of its true and actual value." It seems to be obvious, therefore, that although an Assessor is at liberty to base real estate assessments upon values or consideration declared in recent conveyances, if the Assessor elects to use recent sales as the basis for the assessment of real estate, he is obligated by the equal protection clause of the Fourteenth Amendment to the *United States Constitution* and the equal and uniform clause of Section 1, Article X, of the *West Virginia Constitution* to base the real estate assessments of substantially similar real estate, whether owned by a corporation or an individual, upon the same or a similar value, depending on certain variables even though the real estate has not been the subject of a recent conveyance.

The evidence clearly demonstrates, and this Court finds, that though the Assessor and Board of Equalization and Review were lawfully entitled to consider the consideration declared in Petitioners' deed in determining their respective assessments, by intentionally and systematically, failing to either equalize assessments by increasing the assessed value of substantially similar property to the level of Petitioners' assessments, or to equalize assessments by lowering Petitioners' assessments to the level at which comparable real estate was being assessed, the Assessor and Board of Equalization and Review violated the equal and uniform clause of Section 1, Article X of the *West Virginia Constitution* and the equal protection clause of the Fourteenth Amendment to the *United States Constitution.*

From the evidence presented, this Court finds that the assessments complained of by Petitioners were incorrect. In this circumstance, pursuant to the provisions of *West Virginia Code* § 11-3-25, the Circuit Court is obligated to "correct the assessment, and fix the property at its

true and actual value." *Tug Valley Recovery Center, Inc. v. Mingo County Commission*, W.Va., 261 S.E.2d 165, 171; *Killen v. Logan County Commisison*, W.Va., 295 S.E.2d 689, 706.

Though our Court, at page 172 of the *Tug Valley Recovery Center, Inc. v. Mingo County Commission*, declined, in view of the full taxation mandates of *West Virginia Code* § 11-3-1 and § 18-9A-1, to reduce the Petitioners' assessment and instead directed an increase in the assessment of the taxpayers who were undervalued, this Court is of the opinion that a reduction of the Petitioners' assessment, in this instance, is proper for several reasons.

First, as our Court noted in the *Killen* decision, at page 703, "[t]he United States Supreme Court . . . [i]n Sioux City Bridge Co. v. Dakota County, 260 U.S. 441, 43 S.Ct. 190, 67 L.Ed. 340 (1923) . . . ruled that where uniformity of taxation and full value assessment could not be reconciled, uniformity took precedence."

In the present matter, though this Court is of the opinion that authority exists to order the Assessor to equalize assessments by increasing the assessment of comparable properties to the level at which Petitioners' property is assessed, the undersigned is further of the opinion that the consideration declared in an arms length transfer of real estate, though relevant as to value, should not necessarily serve as the basis for the assessment of all similar real estate.

Though Petitioners' deed reflects a declared consideration of $10,000,000.00 for 13,238 or 14,038 acres of coal in Webster, Braxton and Nicholas Counties of which 7783 acres is in Webster County, and various assignments of leases and options, though the coal property may in fact have been worth the consideration declared, the differing abilities of various real estate owners to bear the burden of real estate taxes based upon prices paid by the wealthy leads the undersigned to conclude the consideration de-

clared in Petitioners' deed should not, in this case, serve as the basis for the assessment of all substantially similar coal property in Webster County.

The impact of high real estate taxes will obviously be greater upon one of modest income than it will on an individual or corporation possessed of wealth sufficient to purchase real estate at a premium price and in a position to take advantage of various tax write offs available under present tax laws.

The consequence of a high real estate assessment, and tax, will materially vary depending on whether the taxpayer is one of limited or fixed income or is a public utility company, entitled to write off, and to pass on to consumers, the cost of real estate taxes levied. Should uniformity of taxation be attempted through an increase of the assessment of Webster County real estate to the level of that of the Petitioners, it seems probable that individual ownership of real estate of the nature owned by the Petitioners would shortly disappear except for those of great wealth.

Second, from a reading of *W.Va. Code* § 11-3-25, relating to relief in the Circuit Court against an erroneous assessment, it appears that a Circuit Court, in hearing an appeal as contemplated in § 11-3-25, is empowered to fix the true and actual value of property erroneously assessed and to order the refund of excess taxes paid, the probable basis for the public clamor in this matter, if the property is valued too high, and if valued too low, to correct the valuation and fix its true and actual value.

From the foregoing, it is obvious that a Circuit Court is vested with authority to increase or decrease values in the process of correcting erroneous assessments, as an Assessor and a Board of Equalization and Review is vested with authority to increase or decrease assessments to secure equal and uniform property taxation.

Therefore, though our Court appeared to discourage a reduction in valuation to secure equal and uniform taxation, in the *Tug Valley Recovery case*, supra, page 172, it is evident from the provisions of *W.Va.Code* § 11-3-25, and the utilization of this approach by our Court in a series of its decisions: *In Re United States Steel Corp.*, W.Va. 268 S.E.2d 128 (1980); *In Re Tax Assessment Against Pocahontas Land Corp.*, W.Va. 210 S.E.2d 641 (1976); *In Re Assessment of Kanawha Valley Bank*, 144 W.Va. 346, 109 S.E.2d 649 (1959), that where a reduction in the value of property erroneously assessed is necessary to insure uniformity, Circuit Courts are empowered to reduce the values of properties erroneously assessed.

Finally, our Court has emphasized the need to assure uniform property assessment by, among other things, the implementations of appropriate provisions of *W.Va. Code* § 18-9A-11. At page 705 of *Killen v. Logan County Commission*, supra our Court, in emphasizing the need to make use of the Tax Commissioner's appraisals, stated that "W.Va. Code § 18-9A-11 provides that the county officials shall use such appraised valuations as a basis for determining the true and actual value for assessment purposes . . . This Court adheres to the view that 'the use of the word shall without any modification unquestionably makes the direction mandatory.'"

As has been previously noted, *W.Va. Code* § 11-3-25 provides that in instances of erroneous assessment the Circuit Court is to "correct the assessment, and fix the property at its true and actual value". In performing this function, our Court, in *Tug Valley Recovery Center, Inc. v. Minko County Commisison*, 261 S.E.2d 165, at 173, and in *Killen v. Logan County Commission*, W.Va., 295 S.E.2d 689, at 705, stated that "[i]t is incumbent upon the circuit court, as it would be upon the county commission and the assessor, to set the assessed value of all parcels of land at the amount established by the State Tax Commissioner."

Consistent with our Courts' directive and in consideration of the evidence adduced, the Tax Commissioner's Guide of Assessors Valuation of Coal Appraisals, indicating an appraised value for Webster County coal of $360.00 per acre, during the period involved, a reduction in valuation is required.

It is therefore, pursuant to the provisions of *W.Va. Code* §§ 11-3-25, the judgment and order of this Court and this Court finds and fixes the true and actual value of Petitioners' coal property at $360.00 per acre.

It is the further JUDGMENT and ORDER of this Court that the Assessor recompute Petitioners' assessed valuations in a manner consistent with true and actual values hereinbefore found and fixed by this Court, at sixty percent thereof, and that the Sheriff forthwith issue new tax tickets to Petitioners applying the correct levy rate to the corrected valuations and assessments.

It is the further JUDGMENT and ORDER of this Court that the Webster County Commission and Webster County Sheriff refund to Petitioners the unconstitutional taxes paid by Petitioners for the years 1981, 1982, 1983, 1984 and 1985.

To all of which the respondent, The Webster County Commission, by counsel, objects and excepts.

ENTERED this the 13th day of February, 1986.

/s/ Danny O. Cline
DANNY O. CLINE
Judge

Approved as to form:

/s/ W. T. Weber, Jr.
Attorney for Petitioners

/s/ Jack Alsop
Attorney for Respondent

APPENDIX F

IN THE CIRCUIT COURT OF WEBSTER COUNTY
WEST VIRGINIA

CA #2309

IN RE: 1975 TAX ASSESSMENT AGAINST
PARDEE & CURTIN LUMBER CO.

vs.

COUNTY COURT OF WEBSTER COUNTY

CA #2531

IN RE: 1976 TAX ASSESSMENT AGAINST
PARDEE & CURTIN LUMBER CO.

vs.

COUNTY COURT OF WEBSTER COUNTY

CA #2533

IN RE: 1976 TAX ASSESSMENT AGAINST
SUN LUMBER COMPANY

vs.

COUNTY COURT OF WEBSTER COUNTY

CA #2532

IN RE: 1976 TAX ASSESSMENT AGAINST
ALLEGHENY-PITTSBURGH COAL COMPANY

vs.

WEBSTER COUNTY COMMISSION

CA #——

IN RE: 1977 TAX ASSESSMENT AGAINST
ALLEGHENY-PITTSBURGH COAL COMPANY

vs.

WEBSTER COUNTY COMMISSION

CA #78-C-33

IN RE: 1978 TAX ASSESSMENT AGAINST
ALLEGHENY-PITTSBURGH COAL COMPANY

vs.

WEBSTER COUNTY COMMISSION

CA #79-C-38

IN RE: 1979 TAX ASSESSMENT AGAINST
ALLEGHENY-PITTSBURGH COAL COMPANY

vs.

WEBSTER COUNTY COMMISSION

CA #80-C-59

IN RE: 1980 TAX ASSESSMENT AGAINST
ALLEGHENY-PITTSBURGH COAL COMPANY

vs.

WEBSTER COUNTY COMMISSION

CA #81-C-39

IN RE: 1981 TAX ASSESSMENT AGAINST
ALLEGHENY-PITTSBURGH COAL COMPANY

vs.

WEBSTER COUNTY COMMISSION

CA #82 Misc. 26

IN RE: 1982 TAX ASSESSMENT AGAINST
ALLEGHENY-PITTSBURGH COAL COMPANY

vs.

WEBSTER COUNTY COMMISSION

Civil Action No. 84-MSC-8

IN RE: TAX ASSESSMENT AGAINST
ALLEGHENY-PITTSBURGH COAL COMPANY
FOR YEAR 1983

Civil Action No. 84-MSC-9

IN RE: TAX ASSESSMENT AGAINST
EAST KENTUCKY ENERGY CORPORATION
FOR YEAR 1984

Civil Action No. 85-MSC-20

IN RE: TAX ASSESSMENT AGAINST
EAST KENTUCKY ENERGY CORPORATION
FOR YEAR 1985

ORDER

This matter came on to be heard on the 31st day of January, 1986 upon various and sundry matters and there appeared East Kentucky Energy Corporation by Dan O. Callaghan, its attorney and Allegheny-Pittsburgh Coal Company, Pardee & Curtin Lumber Company and The Sun Lumber Company by Ernest V. Morton, Jr., their attorney.

Among other things, Allegheny-Pittsburgh Coal Company, Pardee & Curtin Lumber Company and The Sun Lumber Company, by their attorney moved that in each and all of their cases the principles enunciated and set

forth in the Court's order of November 22nd, 1985 be taken and applied to their specific cases and that the ruling of the Court therein be likewise held to apply to said cases, which motion the Court sustained.

Accordingly, it is hereby ADJUDGED and ORDERED that the rulings and holdings of this Court insofar as the same are applicable thereto, are hereby held and deemed to be the law enunciated and the ruling on the relief sought in each and all of the cases of the said Allegheny-Pittsburgh Coal Company, Pardee & Curtin Lumber Company and The Sun Lumber Company heretofore enumerated.

Enter this 20th day of February, 1986.

Danny O. Cline
Judge

APPENDIX G

IN THE CIRCUIT COURT OF WEBSTER COUNTY
WEST VIRGINIA

Civil Action No. 86-MSC-18

IN RE: ONEIDA COAL COMPANY, INC.,
a corporation

[Filed Mar. 21, 1986]

ORDER

On the 21st day of March, 1986, came Oneida Coal Company, Inc., a corporation, Petitioner, by W. T. Weber, Jr., its attorney, and also came Jack Alsop, Prosecuting Attorney of Webster County, West Virginia, pursuant to order heretofore entered in this action on the 10th day of March, 1986, fixing this day for hearing upon the petition of Oneida Coal Company, Inc., a corporation, for an appeal pursuant to *West Virginia Code* § 11-3-25 from the Commission's denial of relief for equalization and review of assessment of Petitioner's coal property fully mentioned and described in the petition, and thereupon upon argument of counsel for Petitioner and the Prosecuting Attorney of Webster County, West Virginia the Court being of the opinion that Petitioner has timely applied for relief from the assessment of its property in Webster County, West Virginia, in accordance with the provisions of *West Virgina Code* § 11-3-25 and that Petitioner had heretofore notified the Prosecuting Attorney of Webster County, West Virginia, at least ten days prior hereto of the time and place for hearing of its application for appeal, and the Prosecuting Attorney of Webster County, West Virginia having given

at least five days notice of such hearing to the West Virginia State Tax Commissioner, is further of the opinion to and does hereby grant to Petitioner an appeal pursuant to *West Virginia Code* § 11-3-25 from the Webster County Commission's order denying Petitioner's application and petition to the Webster County Commission for equalization and review of assessment of Petitioner's coal property in Webster County, West Virginia, as contained and set forth in Petitioner's petition filed in the County Commission of Webster County, West Virginia, and in Petitioner's petition heretofore filed herein.

Thereupon, this action came on further to be heard upon the petition of Petitioner heretofore filed herein, the testimony and evidence adduced at the hearing before the Webster County Commission, all of which has heretofore been filed herein, the pleadings heretofore filed before the Webster County Commission and in this Court, the order of the Webster County Commission and this Court, notices, memoranda of points, authority and argument of Petitioner and reply thereto of the Prosecuting Attorney of Webster County, West Virginia, and argument of counsel, all of which has been maturely considered by this Court.

[The opinion here repeats verbatim the text of the February 13, 1986 opinion, reproduced at App. 50a-78a, with a change from the plural "petitioners" to "petitioner" throughout, and the addition of a new finding of fact: "(25) That the appraised and assessed values of coal properties in Webster County have not been materially changed or revalued for the years 1981 through 1986, both inclusive." prior to finding (25) at App. 56a, and renumbering of the subsequent findings.]

It is the further JUDGMENT and ORDER of this Court that the Assessor recompute Petitioner's assessed valuations in a manner consistent with true and actual values hereinbefore found and fixed by this Court, at sixty percent thereof, and that the Sheriff issue tax tick-

ets to Petitioner applying the correct levy rate to the corrected valuations and assessments.

To all of which the respondent, The Webster County Commission, by counsel, objects and excepts.

ENTERED this the 21st day of March, 1986.

/s/ Danny O. Cline
DANNY O. CLINE
Judge

Approved as to form:

/s/ W. T. Weber
W. T. WEBER
Attorney for Petitioner

/s/ Jack Alsop
JACK ALSOP
Attorney for Respondent

APPENDIX H

THE CIRCUIT COURT OF WEBSTER COUNTY WEST VIRGINIA

Civil Action No. 86-MSC-17

IN RE: TAX ASSESSMENT AGAINST EAST KENTUCKY ENERGY CORPORATION, 1986 TAXES

ORDER

On the 21st day of March, 1986, this action came on to be heard before the Court, the petitioner-taxpayer appearing by counsel and the respondent, County Commission of Webster County, appearing by its Prosecuting Attorney; upon petition for appeal by the taxpayer from the action of the Webster County Commission sitting as a Board of Equalization and Review of the 1986 taxes of this taxpayer; upon the record of proceedings before the County Commission, sitting as aforesaid, including petitioner's petition for review and equalization filed with the Commission, transcript of testimony taken before the Commission certified as required, all papers filed in the proceeding, all orders of the Commission, all exhibits introduced before the Commission, all being the complete full record of all proceedings before the Commission, together with copy of petitioner's notice to the Prosecuting Attorney of Webster County; upon review of all of said materials by the Court; upon argument of counsel; upon consideration of all of which, the Court makes the following:

FINDINGS OF FACT

1. The Assessor has assessed the properties of this taxpayer in Webster County in exactly the same manner as

they were assessed for the year 1985 and previously, which assessments have been approved and confirmed by the Webster County Commission, sitting as aforesaid, without change.

2. The Assessor has assessed all other property in Webster County, with a few minor exceptions, on exactly the same basis as done for the year 1985 and previous years. These assessments have likewise been confirmed by the County Commission, sitting as aforesaid.

3. The facts set forth in the previous order of this Court dated November 22, 1985, in consolidated Civil Actions 85-MSC-20, et al., are exactly the same, are applicable to this case and are adopted by the Court herein, reference is here made to said Order.

CONCLUSIONS OF LAW

1. There being no change in the facts, all of the conclusions of law previously set forth in the order of the Court dated November 22, 1985, are hereby adopted as conclusions of the Court herein and reference to said order is here made.

2. This petitioner-taxpayer is entitled to relief from the assessment as prayed for for all the reasons set forth in the previous order of the Court dated November 22, 1985, and therefore the assessments should be reduced accordingly. It is, therefore,

ORDERED AND ADJUDGED that the relief prayed for by the petitioner-taxpayer in its petition be granted and that the valuations be reduced as set forth in the previous order of the Court dated November 22, 1985, for all the reasons set forth therein; it is, further:

ORDERED AND ADJUDGED that all of the findings of fact and conclusions of law and orders of the Court set forth in the order of the Court dated November 22, 1985, are hereby incorporated by the Court herein and made the order of the Court in this action; it is, further:

ORDERED AND ADJUDGED that the Assessor recompute petitioner's valuations in the matter consistent with true and actual values hereinbefore found and fixed by this Court in its order of November 22, 1985, at 60% thereof, and that the Assessor forthwith issue new tax tickets to petitioner applying the correct levy rate to the corrected valuations and assessments. Whereupon, the parties, by counsel, announced to the Court that they had agreed on the amount of tax for the year 1986 in accordance with the order of the Court dated November 22, 1985, in the amount of $28,045.08 ($14,022.54 per half less discount if paid within the time prescribed by statute to obtain same or plus interest as provided by statute if not so paid, all per computation attached hereto and made part hereof) without any of the parties waiving any right they might have on appeal; upon the County Commission, by its attorney, specifically objecting; upon consideration of all of which the Court was of the opinion that the total amount thus computed was correct in accordance with its order of November 22, 1985, subject to all rights of the respondent, County Commission, to appeal and without waiver of any such right; upon the Court being of the opinion that said amount when paid would discharge the tax obligation of said taxpayer for the year 1986, without waiving any right of appeal of the County Commission or petitioner; upon consideration of all of which it is, further:

ORDERED AND ADJUDGED that when the petitioner-taxpayer, East Kentucky Energy Corporation, pays to the Sheriff of Webster County the sum of $14,022.54 per half (less discount if paid within the time provided for by statute for same or plus interest as provided by statute if not so paid), same will discharge the tax obligation of this petitioner-taxpayer for the tax year 1986, subject to all rights of appeal by the County Commission, none of this consisting of a waiver by it of any and all issues it wishes to raise thereby; to all of which the County Commission, by its counsel, objects and excepts.

ENTER: 21st day of March, 1986.

/s/ Danny O. Cline
Judge

APPROVED FOR ENTRY BY:

/s/ Dan O. Callaghan
Attorney for Petitioner-Taxpayer
East Kentucky Energy Corporation

INSPECTED BY:

/s/ Jack Alsop
Attorney for Webster County
Commission

APPENDIX I

ORDERS—WEBSTER COUNTY COMMISSION

Regular Session, February 1, 3, 6, 8, 10, 15, 1984

BEFORE THE COUNTY COMMISSION
OF WEBSTER COUNTY, WEST VIRGINIA

IN RE: TAX ASSESSMENT AGAINST
EAST KENTUCKY ENERGY CORPORATION

ORDER

On the 15th day of February, 1984, this action came on to be heard before the County Commission of Webster County, sitting as a Board of Equalization and Review, duly called upon the Petition of East Kentucky Energy Corporation in regard to its assessment within Webster County for the year 1984; upon evidence presented to the Commission in the nature of Stipulation of Fact and Issues of Law to be decided by it; upon exhibits presented to the Commission which were likewise stipulated and agreed; upon evidence produced by the County of Webster; upon consideration of all of which it is:

ORDERED AND ADJUDGED that the Petitioners failed to prove that the property in the name of East Kentucky Energy Corporation is improperly valued on the land books for the year 1984; it is, further:

ORDERED AND ADJUDGED that the Petitioner, East Kentucky Energy Corporation has failed to produce evidence that the method by which the Assessor of Webster County arrived at the value of said land was not "equal and uniform" as required by the Constitution of West Virginia, Art. X, § 1; it is further:

ORDERED AND ADJUDGED that the Assessor, by using an "equal and uniform" method properly arrived at the assessed value for Petitioner's property and that said assessment was proper: it is, further:

ORDERED AND ADJUDGED that the relief prayed for by East Kentucky Energy Corporation is hereby denied; and, it is further:

ORDERED AND ADJUDGED that the Assessor extend the taxes in accordance with the value assessed on the land books 1984.

ENTER: 15th day of February, 1982 [sic].

Webster County Commission

By ERNEST F. AYERS
President

E. M. COOL
Commissioner

JOE ADAMS
Commissioner

ORDERS—WEBSTER COUNTY COMMISSION

Board of Equalization & Review,
February 1, 4, 7, 12 and 15th, 1985

BEFORE THE WEBSTER COUNTY COMMISSION SITTING AS A BOARD OF EQUALIZATION AND REVIEW

IN RE: TAX ASSESSMENT AGAINST
EAST KENTUCKY ENERGY CORPORATION

On the 1st day of February, 1985, this action came on to be heard before the County Commission of Webster County, West Virginia, sitting as a Board of Equalization and Review in regard to its assessment within Webster County, West Virginia for the taxable year 1985.

Whereupon, the petitioner commenced the presentation of its evidence, and, thereafter, the parties announced to the Commission that this matter was to be continued for further presentation of its evidence on the 12th day of February, 1985.

On the 12th day of February, 1985, there reappeared the parties, and, thereafter, the parties resumed the presentation of the evidence.

Upon evidence produced in this matter, upon consideration of all of which, the Commission does hereby find as follows:

1. Based upon all the evidence adduced at the hearing, including the evidence adduced by the taxpayer, the Commission is of the opinion that the true and actual value of the property owned by East Kentucky Energy Corporation is $29,842,500.00.

2. The Commission is further of the opinion that East Kentucky Energy Corporation has failed to prove by a preponderance of the evidence that the method by which the Assessor of Webster County, West Virginia arrived at the value of the property of East Kentucky Energy Corporation within Webster County, West Virginia was not "equal and uniform" as required by the Constitution of West Virginia, Article 10, Section 1.

It is accordingly ADJUDGED and ORDERED that the Assessor arrived at the assessed value for the petitioner's property and that the assessment is proper.

It is further ORDERED AND ADJUDGED that the relief prayed for by East Kentucky Energy Corporation is hereby denied, and it is further ORDERED and ADJUDGED that the Assessor extend the taxes in accordance with the values assessed therein on the land books for 1984.

ENTERED: February 15, 1985.

/s/ Joe Adams

/s/ E. M. Cool

/s/ Ernest F. Ayers

BEFORE THE WEBSTER COUNTY COMMISSION
SITTING AS A BOARD OF EQUALIZATION
AND REVIEW

IN RE: TAX ASSESSMENT AGAINST
EAST KENTUCKY ENERGY CORPORATION

ORDER

On the 14th day of February, 1986, this action came on to be heard before the County Commission of Webster County, West Virginia, sitting as a Board of Equalization and Review in regard to its assessment within Webster County, West Virginia for the taxable year 1986.

Upon evidence produced in this matter, upon consideration of all of which, the Commission does hereby find as follows:

1. Based upon all the evidence adduced at the hearing, including the evidence adduced by the taxpayer, the Commission is of the opinion that the true and actual value of the property owned by East Kentucky Energy Corporation is $29,842,500.00.

2. The Commission is further of the opinion that East Kentucky Energy Corporation has failed to prove by a preponderance of the evidence that the method by which the Assessor of Webster County, West Virginia arrived at the value of the property of East Kentucky Energy Corporation within Webster County, West Virginia was not "equal and uniform" as required by the Constitution of West Virginia, Article 10, Section 1.

It is accordingly ADJUDGED AND ORDERED that the Assessor arrived at the assessed value for the petitioner's property, and that the assessment is proper.

It is further ADJUDGED and ORDERED that the relief prayed for by East Kentucky Energy Corporation is hereby denied, and it is further ORDERED and ADJUDGED that the Assessor extend the taxes in accordance with the values assessed therein on the land books for 1986.

DATED: 3-18-86.

/s/ Ernest F. Ayers

/s/ E. M. Cool

IN THE COUNTY COMMISSION
OF WEBSTER COUNTY, WEST VIRGINIA,
SITTING AS A BOARD OF EQUALIZATION
AND REVIEW

ORDER

The County Commission of Webster County, West Virginia, sitting as a Board of Equalization and Review, does hereby, on the 27th day of February, 1981, certify that it has completed the assessments for the 1981 Land Books and does order the Assessor of Webster County not to use the 1981 assessments of mineral properties based on the West Virginia Tax Commissioner's method of valuation for coal properties, but to reduce those to comply with the method of assessments utilized for the year 1980, and otherwise to extend the levies as provided upon the 1981 Land Books.

ORDER, ENTER: February 27, 1981.

/s/ Ernest F. Ayers

/s/ Coy D. Gillespie

/s/ Joe Adams

Sitting as a Board of
Equalization and
Review

IN THE COUNTY COMMISSION OF WEBSTER COUNTY, WEST VIRGINIA SITTING AS A BOARD OF EQUALIZATION AND REVIEW

The County Commission of Webster County, West Virginia, sitting as a Board of Equalization and Review, does hereby, on the 15th day of February, 1982, certify that it has completed the assessments for the 1982 Land Books and does order the Assessor of Webster County to extend the levies as provided upon the 1982 Land Books.

All objections and petitions presented before this Court meeting as the Board of Equalization and Review have been considered and the relief prayed for is denied.

ORDER, ENTER: February 15, 1982.

/s/ Ernest F. Ayers
President

/s/ Coy D. Gillespie
Commissioner

/s/ Joe Adams
Commissioner

BEFORE THE COUNTY COMMISSION OF WEBSTER COUNTY, WEST VIRGINIA ACTING AS THE BOARD OF EQUALIZATION AND REVIEW

IN RE: TAX ASSESSMENT AGAINST
ONEIDA COAL COMPANY

ORDER

This 15th day of February, 1983, the County Commission of Webster County, sitting as the Board of Equalization and Review, having considered the petition of Oneida Coal Company, a corporation, in regard to its assessment within Webster County, West Virginia for the year 1982, and the Commission, after considering said evidence and considering the evidence produced by the County of Webster, is of the opinion that the petitioner has failed to prove that the property in the name of Oneida Coal Company is improperly valued on the Land Books for the year 1982, and the said Oneida Coal Company, having failed to produce evidence that the method by which the Assessor of Webster County arrived at the value of said land was not uniform and equal, as required by the Constitution of West Virginia, Article 10, Section 1, and the County having produced evidence and proven that the Assessor, by using a uniform and equal method properly arrived at the assessed land value and that said assessment was proper, the relief prayed for by the said Oneida Coal Company is hereby denied, and it is further ordered that the Assessor extend the taxes in accordance with the value assessed on the 1981 Land Books.

ENTERED: February 15, 1983.

/s/ Ernest F. Ayers
ERNEST F. AYERS

/s/ E. M. Cool
E. M. COOL

ORDERS—WEBSTER COUNTY COMMISSION

Regular Session, February 1, 3, 6, 8, 10, 15, 1984

BEFORE THE COUNTY COMMISSION OF WEBSTER COUNTY, WEST VIRGINIA ACTING AS THE BOARD OF EQUALIZATION AND REVIEW

IN RE: TAX ASSESSMENTS AGAINST ONEIDA COAL COMPANY

ORDER

This 23rd day of February 1984, the County Commission of Webster County, sitting as the Board of Equalization and Review, having considered the petition of Oneida Coal Company, a corporation, in regard to its assessment within Webster County, West Virginia, for the year 1983, and the Commission, after considering said evidence and considering the evidence produced by the County of Webster, is of the opinion that the petitioner has failed to prove that the property in the name of Oneida Coal Company is improperly valued on the Land Books for the year 1983, and the said Oneida Coal Company, having failed to produce evidence that the method by which the Assessor of Webster County arrived at the value of said land was not uniform and equal, as required by the Constitution of West Virginia, Article 10, Section 1, and the County having produced evidence and proven that the Assessor, by using a uniform and equal method properly arrived at the assessed land value and that said assessment was proper, the relief prayed

for by the said Oneida Coal Company is hereby denied, and it is further ordered that the Assessor extend the taxes in accordance with the value assessed on the 1981 Land Books.

ENTERED: FEBRUARY 23, 1984.

/s/ Ernest F. Ayers
ERNEST F. AYERS

/s/ E. M. Cool
E. M. COOL

/s/ Joe Adams
JOE ADAMS

ORDERS—WEBSTER COUNTY COMMISSION

Board of Equalization & Review,
February 1, 4, 7, 12, 15, 1985

BEFORE THE WEBSTER COUNTY COMMISSION SITTING AS A BOARD OF EQUALIZATION AND REVIEW

IN RE: TAX ASSESSMENT AGAINST
ONEIDA COAL COMPANY

On the 1st day of February, 1985, this action came on to be heard before the County Commission of Webster County, West Virginia, sitting as a Board of Equalization and Review in regard to its assessment within Webster County, West Virginia for the taxable year 1985.

Whereupon, the petitioner commenced the presentation of its evidence, and, thereafter, the parties announced to the Commission that this matter was to be continued for further presentation of its evidence on the 12th day of February, 1985.

On the 12th day of February, 1985, there reappeared the parties, and, thereafter, the parties resumed the presentation of the evidence.

Upon evidence produced in this matter, upon consideration of all of which, the Commission does hereby find as follows:

1. Based upon all the evidence adduced at the hearing, including the evidence adduced by the taxpayer, the Commission is of the opinion that the true and actual

value of the property owned by Oneida Coal Company is $5,867,600.00.

2. The Commission is further of the opinion that Oneida Coal Company has failed to prove by a preponderance of the evidence that the method by which the Assessor of Webster County, West Virginia arrived at the value of property of Oneida Coal Company within Webster County, West Virginia was not "equal and uniform" as required by the Constitution of West Virginia, Article 10, Section 1.

It is accordingly ADJUDGED and ORDERED that the Assessor properly arrived at the assessed value for the petitioner's property and that the assessment is proper.

It is further ORDERED and ADJUDGED that the relief prayed for by Oneida Coal Company is hereby denied, and it is further ORDERED and ADJUDGED that the Assessor extend the taxes in accordance with the values assessed therein on the land books for 1984.

ENTERED: February 15, 1985.

/s/ Joe Adams

/s/ E. M. Cool

/s/ Ernest F. Ayers

BEFORE THE WEBSTER COUNTY COMMISSION
SITTING AS A BOARD OF EQUALIZATION
AND REVIEW

IN RE: TAX ASSESSMENT AGAINST
ONEIDA COAL COMPANY, INC.

ORDER

On the 14th day of February, 1986, this action came on to be heard before the Commission of Webster County, West Virginia, sitting as a Board of Equalization and Review in regard to its assessment within Webster County, West Virginia for the taxable year 1986.

Upon evidence produced in this matter, upon consideration of all of which, the Commission does hereby find as follows:

1. Based upon all the evidence adduced at the hearing, including the evidence adduced by the taxpayer, the Commission is of the opinion that the true and actual value of the property owned by Oneida Coal Company, Inc. is $5,867,600.00.

2. The Commission is further of the opinion that Oneida Coal Company, Inc. has failed to prove by a preponderance of the evidence that the method by which the Assessor or Webster County, West Virginia arrived at the value of the property of Oneida Coal Company, Inc. within Webster County, West Virginia was not "equal and uniform" as required by the Constitution of West Virginia, Article 10, Section 1.

It is accordingly ADJUDGED and ORDERED that the Assessor arrived at the assessed value for the petitioner's property and that the assessment is proper.

It is further ADJUDGED and ORDERED that the relief prayed for by Oneida Coal Company, Inc. is hereby denied, and it is further ADJUDGED and ORDERED that the Assessor extend the taxes in accordance with the values assessed therein on the land books for 1986.

ENTERED: 3-18-86.

/s/ Ernest F. Ayers
/s/ E. M. Cool

APPENDIX J

STATEMENT PURSUANT TO RULE 28.1

SHELL OIL COMPANY *

A. *Shell Oil Company*

Subsidiary Companies

IND/AG Chemicals, Inc.
Pecten Arabian Company
Pecten Cameroon LNG Limited
Pecten Chemicals Inc.
Pecten Export Corporation
Pecten Middle East Services Company
Pecten Trading Company
Pecten Ventures Limited
Pecten Vietnam Company
SES, Incorporated
Shell Agricultural Chemical Company
Shell Capital, Inc.
Shell Communications, Inc.
Scallop Corporation
Shell Credit, Inc.
Shell Energy Resources Inc.

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* Shell Oil Company's parent corporation is Shell Petroleum Inc., which, in turn, is owned directly and indirectly by Royal Dutch Petroleum Company (a Netherlands corporation) and The "Shell" Transport and Trading Company, p.l.c. (a United Kingdom corporation). Shell Oil Company itself owns directly or indirectly, both 100% and less than 100% stock interests in approximately 120 corporations that operate both in the United States and in foreign countries. All of the companies are often referred to collectively as the "Royal Dutch/Shell Group of Companies." Counsel is advised that there are subsidiaries, not wholly owned, and affiliates throughout the world of this group which, in the aggregate, are so numerous that they could not be determined or identified for the Court within the time frame for filing this Petition for Certiorari.

Shell Export Company
Shell Investment, Inc.
Shell Motorist Club, Inc.
Shell Pipe Line Corporation
Shell Polymers and Catalysts Enterprises Inc.
Triton Biosciences Inc.
Western Farm Services, Inc.

Affiliated Companies

Fractionation Research, Inc.
Gravcap, Inc.
Heat Transfer Research, Inc.
Inland Corporation
Loop, Inc.
Lucky Chance Mining Company, Inc.
Mesbic Financial Corporation of Houston
Oil Companies Institute for Marine Pollution Compensation Limited.
Oil Insurance Limited
Seadock, Inc.

B. *Shell Credit, Inc.*

Subsidiary Companies

Shell Finance Company
Shell Leasing Company

C. *Shell Energy Resources Inc.*

Subsidiary Companies

Pecten International Company
Shell Gas Pipeline Company
Shell Gas Trading Company
Shell Mining Company
Shell Offshore Inc.
Shell Western E&P Inc.
Scallop Coal Company

D. *Pecten International Company*

Subsidiary Companies

Pecten Argentina Company
Pecten Ash Sham Company
Pecten Bahamas Company
Pecten Belize Company
Pecten Brazil Alagoas Company
Pecten Brazil Alagoas Petroleum Company
Pecten Brazil Amazon Company
Pecten Brazil Amazon Exploration Company
Pecten Brazil Amazon Exploration and Development Company
Pecten Brazil Amazon Petroleum Company
Pecten Brazil Bahia Company
Pecten Brazil Bahia Exploration Company
Pecten Brazil Bahia Exploration and Development Company
Pecten Brazil Bahia Petroleum Company
Pecten Brazil Exploration Company
Pecten Brazil Maranhao Company
Pecten Brazil Maranhao Exploration Company
Pecten Brazil Petroleum Company
Pecten Brazil Rio Grande Do Norte Company
Pecten Cameroon Company
Pecten Canada Limited
Pecten Ecuador Company
Pecten Guinea-Bissau Company
Pecten Malaysia Company
Pecten Malaysia Petroleum Company
Pecten Orient Company
Pecten Overseas Petroleum Company
Pecten Paraguay Company
Pecten Portugal Company S.A.R.L.
Pecten Potiguar Company
Pecten Santos Company
Pecten Santos Exploration Company
Pecten Santos Petroleum Company

Pecten Sarawak Company
Pecten Syria Company
Pecten Syria Petroleum Company
Pecten Tanzania Company
Pecten Tunisia Company
Pecten Victoria Company
Taranaki Offshore Petroleum Company

E. *Shell Mining Company*

Subsidiary Companies

Bellaire Trucking Company
Pecten Coal International Inc.
R. & F. Coal Company
Triton Coal Company
Turris Coal Company
Billiton Metals Inc.
Billiton Minerals U.S.A. Inc.

F. *Shell Offshore Inc.*

Subsidiary Companies

Burrwood Gathering Company
SOI Royalties Inc.

G. *Shell Western E&P Inc.*

Subsidiary Companies

Belridge Farms
Belridge Packing Co.
Chaparro Gathering Company
Choctaw Pipe Line Company
Swepi Royalties Inc.
Shell California Offshore Pipeline Inc.
Shell Cortez Pipeline Company
Shell Western Pipelines Inc.
East Texas Salt Water Disposal Company

Grande Ecallie Land Company, Inc.
Thums Long Beach Company
Van Salt Water Disposal Company
WIDC (Wyoming Industrial Development Corporation)

H. *Shell Cortez Pipeline Company*

Affiliated Company

Cortez Capital Corporation

I. *Pecten Arabian Company*

Subsidiary Company

Pico Limited

J. *Taranaki Offshore Petroleum Company*

Subsidiary Company

Taranaki Offshore Petroleum Company Limited

K. *Shell Chemical Company*
(a division of Shell Oil Company)

Affiliated Companies

George Newman & Company
United Scientific, Inc.

L. *Pecten Trading Company*

Affiliated Company

Oil Companies Institute for Marine Pollution Compensation Limited

M. *Western Farm Service, Inc.*

Subsidiary Company

Pioneer Equipment Co.

N. *Shell Pipe Line Corporation*

Subsidiary Companies

Butte Pipe Line Company
San Joaquin Valley Pipe Line Company

Affiliated Companies

Dixie Pipeline Company
Explorer Pipeline Company
Locap, Inc.
Olympic Pipe Line Company
Plantation Pipe Line Company
West Shore Pipe Line Company
Wolverine Pipe Line Company

O. *Shell Polymers and Catalysts Enterprises Inc.*

Subsidiary Companies

Ardyne Inc.
CRI Ventures, Inc.
Morrison Molded Fiber Glass Company
Premix/EMS Inc.
Quazite Corporation
Rampart Packaging Inc.
Xerkon Inc.

P. *Morrison Molded Fiber Glass Company*

Subsidiary Companies

AFC, Inc.
Glastrusions, Inc.
Glass-Steel, Inc.

Q. *Scallop Coal Company*

Subsidiary Companies

Justin Coal Corportaion
Marrowbone Development Company
Wolf Creek Collieries Company
Shell Coal Terminal Corporation

R. *Billiton Metals Inc.*

Subsidiary Companies

Billiton Commodies Inc.

S. *Scallop Corporation*

Subsidiary Companies

AP Shipping Corporation
Argus Realty Services Inc.
Asiatic Petroleum Corporation
Greater New York Terminal, Inc.
Houston Fuel Oil Terminal, Inc.
Nickerson American Plant Breeders Inc.
Royal Lubricants Company, Inc.
Scallop Liquified Natural Gas, Inc.

T. *Marrowbone Development Company*

Subsidiary Companies

Big Beaver Coal Company

U. *Shell Coal Terminal Corporation*

Subsidiary Companies

Clipper Coal Corporation
Comcoal Corporation
East Kentucky Energy Corporation
Kermit Coal Company
Pike County Coal Corporation
Redbone Coal Company, Inc.
Massey Coal Terminal S. C. Corporation
SLT Corporation
Sunset Coal Corporation
Tug River Mining Group, Inc.

V. *Massey Coal Terminal S. C. Corporation*

Subsidiary Companies

Cooper River Coal Terminal Company

SUN COMPANY, INC.

Elk River Resources, Inc.
Sun Coal, Inc.

- Elk River Minerals Corporation
- Sun Coal East, Inc.
- Wyoming Resources Corporation
  - Cordero Mining Co.
  - Sunedco Coal Co.
  - Bighorn Ranch, Inc.
- Utah Resources Corporation
  - Soldier Creek Coal Co.
  - Sage Point Coal Co.
- Jewell Resources Corporation
  - Jewell Coal & Coke Company, Inc.
  - Jewell Smokeless Coal Corporation
  - Jewell Supply Company
  - Dominion Coal Corporation
  - Cumberland Coal Collieries, Inc.
- West Virginia Resources Corporation
  - Oneida Coal Company, Inc.
  - Scott Equipment Company
- Kentucky Resources Corporation
  - Shamrock Resources Corporation
    - Greenleaf Equipment Company
    - Shamrock Coal Company, Inc.
  - Whitaker Resources Corporation
    - Whitaker Coal Corporation
    - Ray Coal Co., Inc.
    - R.A. Whitaker Trucking Company